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Current Topics.

The Duke of Marlborough's First Wedding.

OUR COMMENTS on the official annulment of the MARLBOROUGH-VANDERBILT marriage, *ante*, p. 1121, like many others, have not proved acceptable to the Roman Catholic press. This is perhaps not very surprising. Criticism was made on the failure of the "Defensor Vinculi" to call evidence and *The Tablet* asks whether THE SOLICITORS' JOURNAL suggests that he ought to have procured "flimsy or fabricated evidence with which to conduct a sham fight." Perhaps this hardly needs an answer. *The Tablet* is no doubt aware that the Rev. ARTHUR INSOLVING, incumbent of Christ Church, Brooklyn, where the ceremony took place, emphatically denies that there was any evidence to show that Miss VANDERBILT was an unwilling bride, and has testified that Bishop LITTLEJOHN, who performed the ceremony, described her as "radiant." Probably few marriages have had such publicity, and the bride, stated to be terrified by her mother, must have had the chance of appeal to hundreds of her friends to help her. But she appealed to none, took her title and bore the Duke two sons before she found out, like the petitioner for annulment in DAVID COPPERFIELD'S case, who married in his wrong name "in case he was not as comfortable as he hoped to be," that she was not as comfortable as in fact she hoped to be, and then she procured a divorce in the English court. The chief evidence given for the annulment, according to *The Times* summary of 8th December, was that of the petitioner and her mother, the latter no doubt anxious to regularise her daughter's present marriage, and therefore freely testifying to her own tyranny for this purpose. The value of such testimony, when the lady had no fear of consequences, and without the record of a rigid and efficient cross-examination, may be judged accordingly. The assumption was made in the note that the annulment of the marriage rendered the issue of it illegitimate, on the ordinary principle of law that a contract which is declared absolutely and altogether void, is not valid for its chief purpose. English lawyers will perhaps be less surprised at the error of this assumption than at the anomalous effect of the Roman decree of nullity, which the plain man will hardly distinguish on this point from the English divorce.

The Tablet, in calling attention to the collusion and perjury in our own Divorce Court, is on firmer ground, but two wrongs do not make a right. On p. 333, *ante*, will be found a comment on English divorce by mutual consent, and the device of an hotel bill, to which we would invite *The Tablet's* full agreement.

The Problem raised by Mrs. Christie.

COLONEL CHRISTIE has stated that the reason why Mrs. CHRISTIE disappeared was her loss of memory and medical evidence has been made public that when found Mrs. Christie was suffering from loss of memory. For the present purposes it will therefore be assumed that she could not fairly be held responsible for the expenses of the prolonged search for her. Obviously, however, the case may be suggested of some notoriety-hunter—actress, author, or other person—desiring the limelight and deliberately doing the same thing for the purpose of advertising a forthcoming play, book, or other matter. Let it be supposed that ponds are dragged, cars are driven hundreds of miles, and the countryside is raked over "with a small tooth-comb" as a character said in the "Irish R.M.," to find a person watching calmly aloof, until he or she has judged the apposite moment for entry on the stage. Money has been spent, some inevitable damage to the countryside has been done by the trampling of well-meaning seekers, and the time of the police, urgently needed to repress increasing crimes of violence, has been utterly wasted. Have, then, the ratepayers who pay the police, or the landowners who have willingly put up with invasion which, if they had known the circumstances, they would never have tolerated, any remedy? The culprit, of course, has a glib defence; the police and the public were not asked to hunt for him or her, and, if they have chosen to do so, that is their affair.

In effect, is hoaxing a public authority so as to make it waste its efforts, a public offence, or should it be so? It is by no means a rare occurrence. One of the commonest and most detestable forms of it is a false alarm of fire, which became such a nuisance over thirty years ago that the False Alarm of Fire Act, 1895, was passed, imposing a penalty of £20 for the offence. It is difficult to understand the mentality of people who do this kind of thing, but they have amply proved their existence. Hoaxes on a more elaborate scale are, of course, rarer, and their perpetrators are usually mere swindlers seeking to obtain money by false pretences, like the renowned cobbler of Koepenick, or the Baltic miner, a few days ago, who masqueraded as Prince Wilhelm of Prussia. They can be dealt with under the ordinary law, but the person who seeks an indirect advertisement is a more difficult problem. If anyone disappears, and a relative asks the police to make a more intensive search than their exact duty requires, they have, of course, the recent decision of *Glasbrook Brothers Ltd.* v. *Glamorgan C.C.*, 1925, A.C. 270, to warrant their demanding payment (in that case, for special protection of a colliery during a strike, but the same principle would apply). The person who actually causes the trouble, however, cannot be reached in this way, and though it might be possible to make him or her liable, to draft a suitable measure would not be easy. In passing, it may be observed that the police are continually troubled with bogus confessions of murder, etc., needing time and expense to investigate. There, however, they have some little protection, for the sham murderer remains in their custody, and,

it is understood, usually finds that his joke entails certain personal inconveniences. But it would be better if anyone knowingly deceiving the police, with the consequence of wasting their time and public money, could be made directly liable by statute.

A Motorist's Dilemma.

A MOTORIST summoned recently under the Road Vehicles (Registration and Licensing) Regulations, 1924, regulation 4 (5), for exhibiting a licence upon which the particulars had become illegible, complained that this was due to the poor ink used by the county council which issued the licence. He was asked why he did not ink over the faded writing himself, and he then quoted other words in the same regulation which required him not to write or draw upon the licence. But the dilemma was not so conclusive as he sought to represent it. The regulation forbids the alteration, defacement or mutilation of, or addition to, any licence, either by writing, drawing, or in any other manner. A making clear, by careful writing over faded figures, might perhaps by a pedantic person be treated as an addition, but all the words in the regulation are to be read as *ejusdem generis*, and taken in that common-sense as well as technically correct way, none of them make punishable a person *bonâ fide* seeking to keep his licence legible. What is aimed at is clearly the falsification of the document, and it would be a complete defence that, after writing over the old particulars, they made exactly the same statement as they did when the document was issued. Indeed, the onus of proof to the contrary would be upon the prosecution.

French Tribute to Lord Brougham.

WHILE VERY diverse opinions may be entertained in this country regarding the precise place which Lord BROUGHAM is entitled to hold among advocates and judges of the past, there can be no doubt that in France, and especially in Cannes, where very early he acquired a residence and where he was buried, his name is held in great veneration. Last week "les amis de Cannes" decided to mark still further their appreciation of his services to the town by placing a tablet on the spot where he first took up residence. BROUGHAM loved France, and it may be recalled that he actually expressed the desire in 1848 to become a French citizen, but as he was unwilling to renounce at the same time his British nationality, there were obvious difficulties in the way of realising his ambition; but, as is said, in the "Grande Dictionnaire" by LAROUSSE, "la demande du noble lord n'en est pas moins flatteuse pour la France et pour les hommes qui dirigeaint à cette époque les destinées de notre pays." It is true that it was not so much as a lawyer that BROUGHAM achieved renown in France, but there, too, his ceaseless activity in the reform of our legal and parliamentary systems, and his fame as an orator, were not unrecognised.

"Bleak House" and the Lay Litigant.

WHEN A LITIGANT in person made a misconceived application to Mr. Justice ROCHE, the latter benevolently advised him, the better to realise his folly, to read "Bleak House." On receiving the answer, no doubt a disconcerting one, that he had already done so, the judge could only suggest that the operation should be repeated. Apart from the question whether lititis, or inflammation of that portion of the brain which controls the desire for civil process, is really curable, issue may be raised whether the prescription given was the right one for the purpose. "Bleak House" certainly gives a graphic description of the leisurely progress of a suit in the unreformed Court of Chancery, but the book is an indictment rather of the methods of justice, than of the foolishness of the litigant in person. Moreover, the substance of the parties to *Jarndyce* v. *Jarndyce* was equally wasted whether they had employed counsel or otherwise. Now that the cult of the Master has been so revived, and especially having regard to the season of the year, one must perhaps tread as delicately in criticism as GEORGE III in his memorable *dictum* on SHAKESPEARE; without prejudice, however, it may perhaps be observed that the average litigant in person has less of the faculty of concentration than the book demands. SAM WELLER'S stern exordium to the old cobbler to go and apologise to Chancery, and the latter's patient explanation in return, drive home the moral of avoiding entanglement with the law in a manner which makes it far easier to absorb. Yet, when that moral is conceded, has not the litigant in person the last word when he says that, if he is to be discouraged, justice is accessible only to those who can or will pay the professional to obtain it? No judge and no statesman wishes this reproach to our system of law, and hence the indulgence of practically all our judges to the lay litigant, in the face of gross mistakes, for which the professional would be most unmercifully trounced. In effect, it is essential for a court to have rules, to avoid an utter waste of public time and money, and, in these days of special legal assistance to poor persons, every litigant may reasonably be asked either to master such rules sufficiently to prevent waste of the judge's time, or to have recourse to the legal assistance that is so easily available.

Civil Servants and the Right to Pensions.

IN *The Times* of 8th December there was a note from a correspondent as to an issue between the Civil Service, as represented by the Superannuation Rights Association, and the Treasury, as to the right to pensions. The association contends that this is an indefeasible right enforceable by law, the Treasury, in effect, that it is in the nature of a gratuity. The preliminary point, that "the King can do no wrong," and that therefore action will not lie against the Crown, can perhaps be met by the answer that a successful claimant in a petition of right is practically in the same position as a successful plaintiff. BLACKSTONE observes characteristically that, "to know of a wrong and to redress it are inseparable in the Royal breast." The civil servants, however, have a harder nut to crack in s. 30 of the Superannuation Act, 1834, which expressly provides that nothing in it shall "extend or be construed to extend to give any person an absolute right to compensation for past services, or to any superannuation or retiring allowance under this Act." By s. 18 of the Superannuation Act, 1859, it was to be construed as one Act with that of 1834, and in *Cooper* v. *R.*, 1880, 14 C.D. 311, it was definitely held that superannuation allowance under the two Acts was merely in the nature of bounty, and this case was approved and followed in *Yorke* v. *R.*, 1915, 1 K.B. 852. And the Superannuation Act, 1909, being by s. 8 to be read as one with the previous Acts, does not abolish the principle. Similarly, there is an over-riding condition, in any agreement of service with the Crown, whether military or civil, that there shall be a power of instant dismissal, as laid down in *Dunn* v. *R.*, 1896, 1 Q.B. 116. In *Leaman* v. *R.*, 1920, 3 K.B. 663, an unsuccessful effort was made to distinguish the case of a private soldier from that of an officer in respect of the over-riding rights of the Crown. These cases in effect lay down the law that servants of the Crown, as such, have no enforceable rights at all, except, probably, for payment of salary actually due. Whether this is just or otherwise is, of course, a matter for the decision of Parliament, and not for the courts. The argument for instant dismissal is that an insubordinate servant of the Crown, especially in a fighting force, may be a public danger, because, acting in the name of His Majesty, he has large powers and can command obedience, possibly in carrying out some extremely unjust and oppressive policy forbidden by his superiors. It may be, however, that the power of suspension from duty and dismissal for misconduct, which is open to an ordinary employer, would meet such cases, and there is something to be said for abolishing special Crown privileges which are not indispensable.

Trade Unions and the Law: their History and Present Position.

VI.

By E. P. HEWITT, K.C., LL.D.

(*Continued from Vol. 70, p. 1230.*)

Before concluding these articles, a few observations upon the question of a general strike, from the standpoint of the law, would seem to be called for. A general strike is an attempt to gain certain ends by putting constraint upon the Government of the day, either directly or through the general public. The business life of the country is to be held up and essential services stopped; and by these means ministers are to be forced, either to introduce and carry through some legislation desired (e.g., the nationalisation of some industry) or to put pressure on certain employers with whom a dispute may have originated to yield to the demands made upon them. At common law, such a strike is an illegal conspiracy—it seems to satisfy both branches of the definition of a conspiracy given above, namely, an agreement between two or more persons to do an unlawful act, or to do a lawful act by unlawful means—nor is it protected by statute. In the *National Sailors Union* v. *Reed*, 1926, Ch. 536, an injunction was granted against the defendants (being officials of a branch of the plaintiff union) calling out on strike the members of the branch without the authority of the union's executive. Such action by the defendants was in direct breach of the rules of the union, and the case not falling within the class of agreements made unenforceable by s. 4 of the Act of 1871, there was no answer to the claim for an injunction. But the learned judge also dealt with the more general question, and expressed a very definite opinion upon the illegality of the general strike then pending—

> "The so-called General Strike," said Mr. Justice Astbury, "called by the Trade Union Congress Council, is illegal, and persons inciting or taking part in it are not protected by the Trade Disputes Act, 1906."

The meaning of the expression "trade dispute," as defined by the Act of 1906, has been given in a previous article, and it is interesting to refer to the following passage in Sir Henry Slesser's book of lectures:—

> "There has recently arisen for consideration the question how far a strike called for political objects . . . *a strike to interfere with or constrain the Government* [my italics], in conduct which the trade unions do not approve, can be said to be in contemplation or furtherance of a trade dispute. This matter has fortunately not yet had to be decided, but I have very little doubt that such a strike would not be covered by the words in the definition (i.e., of 'trade dispute') in the Trade Disputes Act, 1906."

Although a general strike may have originated in, or developed out of a trade dispute, it goes far beyond anything contemplated by the Trade Union Statutes, and acts done in promoting and carrying on the same are not acts done "in contemplation or furtherance of a trade dispute" within the Act of 1906. Results follow from this of great importance. The picketing clause, for example, does not apply, and, accordingly, anyone who pickets in support of a general strike is subject to the liabilities imposed by the common law, and also to the special liabilities imposed by s. 7, of the Conspiracy and Protection of Property Act, 1875, which, in that case must be read without the qualification contained in the repealed proviso to that section, and also without the qualification contained in s. 2 of the Act of 1906. Further, a general strike requires, in effect, contemporaneous action, making it impossible for those who engage in it to give the notices necessary for the lawful termination of engagements of service, and it thus involves breaches of contract on a vast scale. The protection given by s. 3 of the Act of 1906 would not apply, and accordingly, the liability incurred at Common Law by anyone who (except in special cases) induces another to break a contract, must rest, it would seem, on trade union executives and those who assist them in persuading persons, without regard to contractual obligations, to join in a strike of that description. The question of a general strike seems also to call for a further comment. By engaging in a strike of this nature a trade union shows that its principal objects are not purely industrial, and are therefore not "statutory," and it would seem, therefore, that a liability would be incurred to have its certificate withdrawn.

From what is stated in this and the previous articles, the present legal position of trade unions may, it is thought, be summarised as follows:—

(1) A trade union is a legal entity, anomalous in character and governed by statute: (*Taff Vale Case*, 1901, A.C. 426; the judgment of Farwell, J., p. 429, and judgments of Lords Macnaghten and Lindley; *Osborne* v. *A.S.R.S.*, 1909, 1 Ch. p. 174 (Cozens-Hardy, M.R.), and p. 191 (Farwell, L.J.)).

(2) Trade unions may be registered, but this is not obligatory. Many of the statutory advantages and privileges, however, are confined to those trade unions which are registered (ss. 6-18 of the Trade Union Act, 1871).

(3) Trade unions may sue by their trustees, and they may be sued either in their own name or in a representative action, except where expressly exempted by statute (*Taff Vale Case*, the judgments of Farwell, J., and Lords Macnaghten and Lindley, 1901, A.C., pp. 429, 438, 443; *Parr* v. *Lancashire and Cheshire Miners' Federation*, 1913, 1 Ch. 366, 375; the "Annual Practice," 1926, p. 68; "Chitty's K.B. Forms," p. 671).

(4) The liability of a trade union to be sued does not depend upon registration (Lord Macnaghten's judgment in the *Taff Vale Case*, 1901, A.C., at p. 438; *Parr* v. *Lancashire and Cheshire Miners' Federation*, 1913, 1 Ch., at p. 375).

(5) The actions which may be brought against the trustees of a trade union are actions concerning the property or claim to property of the trade union and not actions for tort unconnected with property (Trade Union Act, 1871, s. 9; Farwell, L.J., in *Vacher's Case*, 1912, 3 K.B., at p. 560; Lord Moulton in the same case, 1913, A.C., p. 129).

(6) Any trade union, whether registered or not, is required to have as its principal objects—that is *all* its principal objects both under its constitution and as actually carried on, "statutory objects" as defined by the Act of 1913, and such objects are industrial and not political (ss. 1 and 2 of the Trade Union Act, 1913).

(7) If a trade union, at any time, ceases to have statutory objects as its principal objects, it may, if registered, be removed from the register, the certificate of its registration being withdrawn; or, if without registration it has been given a certificate that it is a trade union within the Acts, such certificate may be withdrawn (s-ss. (2) and (3) of s. 2 of the Act of 1913).

(8) If any of the principal objects of a trade union, either under its constitution or as actually carried on, cease to be statutory, *and* the certificate (if any) granted to such trade union under s-s. (1), or under s-s. (2) of the Act of 1913 is withdrawn, then the trade union is no longer a trade union within the Trade Union Acts (see the definition of a trade union in s. 2 (1) of the Act of 1913).

(9) The exemption from liability of an individual member of a trade union who procures another to commit a breach of a contract of employment, only holds where the act is done in contemplation or furtherance of a trade dispute (s. 3 of the Act of 1906); but the exemption of a trade union as such, whether sued in its own name or in a representative action, from liability for torts, holds whether the act is done in connexion with a trade dispute or not (s. 4 (1) of

the Act of 1906; *Vacher's Case*, 1913, A.C. 107); although a trade union may be sued through its trustees if the act complained of "touches or concerns" the property of the trade union, unless it is done in contemplation or furtherance of a trade dispute (s. 4 (2) of the Act of 1906; *Vacher's Case*, 1912, 3 K.B., pp. 560, 1; 1913, A.C. 115, 129).

(10) The right to picket is qualified—

(*a*) It must be in contemplation or furtherance of a trade dispute (s. 2 of Act of 1906).

(*b*) It must be for the purpose of obtaining information etc.—by peaceful means and no other (observe the word "merely," in s. 2 of the Act of 1906).

(*c*) It must be carried out without any trespass to property (*Larkin* v. *Belfast Harbour Commissioners*, 1908, 2 I.R. 214; *McCusker* v. *Smith*, 1918, 2 I.R. 432).

(11) Expenditure of the union's funds upon political objects is lawful; but in the case of the political purposes specified in s. 3 (3) of the Act of 1913, it is necessary for—

(*a*) A resolution to be passed;

(*b*) A separate fund to be kept;

(*c*) The right of exemption to be given effect to.

(12) A general strike is in law an illegal conspiracy, and acts done in promoting or maintaining the same are not within the protection of the Trade Union Acts (*National Sailors' Union* v. *Reed*, 1926, Ch. 536, 539, 540).

This concludes the present series of Articles on this important subject. Back numbers containing the previous Articles can be obtained on application to the Assistant Editor, THE SOLICITORS' JOURNAL, 94–97, Fetter Lane, E.C.4.

Some Points of Highway Law.

VII.

BY ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from Vol.* 70, *p.* 1230.)

TURNPIKE ROADS.

For many years the main arteries of traffic throughout the country were turnpike roads, that is to say roads subject to turnpike trusts. Such trusts were created by statute and their effect, shortly stated, was that roads were to be made by, or in the case of roads already existing were to be brought under the management and control of trustees who were authorised to take tolls from persons using the roads. It is necessary to emphasise the condition that such trusts were statutory. It was and is quite lawful for the owners of land to lay out a road and demand charges for the use of it; but though it was not definitely decided, the Court of Appeal in the year 1885 expressed the opinion that an individual cannot, without legislative authority, dedicate a road to the public if he reserves the right to charge tolls for such user, and the mere fact that a number of persons form themselves into a company for making and maintaining a road and erect gates and bars and charge tolls does not make the road a turnpike road. (See *Austerberry* v. *The Corporation of Oldham*, 29 Ch. D. 750.) This opinion was followed, in the following year, in the case of *The Midland Rly. Co.* v. *Watton*, 17 Q.B.D. 30. In that case MATTHEW, J., said: "It appears to me that it would be incorrect to describe a road as a turnpike road merely because the proprietors take tolls for the use of it as owners without being subject to any statutory liabilities in respect thereof such as are imposed on the trustees of turnpike roads."

EXPIRATION OF TURNPIKE TRUSTS.

The intention of the legislature in regard to turnpike roads was to relieve rural parishes of the burden of maintaining roads for the purposes of what may be called "through traffic." Such a burden might and was felt to be out of all proportion to the rateable value of the parishes. The statutory trusts, were, for the most part, temporary, that is to say they were created for a specified term of years. This term was in most cases extended from time to time by annual acts, but at the end of the period so extended the roads, if they were highways before the creation of the trusts, reverted to their status as highways repairable by the parish; but if, as sometimes was the case, the road was one newly created by the trustees under their statutory power, the public right of passage came to an end with the Act, although a new dedication might be inferred if the public user was allowed to continue after the expiration of the trust (see *Rex* v. *Winter*, 8 B. & C. 785).

It has already been pointed out in previous articles that at common law what may be called the unit of liability for the repair of highways is the parish, and even in the case of parishes in highway districts formed under the Acts of 1862 and 1864 each parish in such districts remained liable for the cost of repairs of highways within such parish, though what might be called the establishment charges of the Highway Board were defrayed out of a common fund which was contributed to by each parish in proportion to its rateable value. It was not until the year 1878 that the expenses of repairs were thrown upon the district as a whole. That was effected by s. 7 of the Highways and Locomotives (Amendment) Act, 1878.

MAIN ROADS.

Upon the expiration of the several turnpike trusts the circumstances were similar to those which gave rise to the formation of the trusts. In other words, it was felt to be a great hardship upon a rural parish, or even on a highway district, to provide for the maintenance of an arterial road carrying through traffic between great centres of population, and accordingly, in the year 1878, by the Act just mentioned, it was provided that any road which had within the period between the 31st day of December, 1870, and the date of the passing of the Act (the 16th August, 1878) ceased to be a turnpike road, and any road which being at the time of the passing of the Act a turnpike road might afterwards cease to be such should be declared to be a main road. And the section went on to provide that one-half the expenses incurred from and after the 29th day of September, 1878, by the highway authority in the maintenance of such road should, as to every part thereof which was within the limits of any highway area, be paid to the highway authority of such area by the county authority of the county in which such road was situate out of the county rate.

It is unnecessary to consider the reasons for the distinction drawn in the section between roads which ceased to be turnpike roads before and after the passing of the Act, for that distinction is not now of practical importance. If it is desired to enquire more particularly into the reasons for the distinction they will be found concisely stated in "Pratt on Highways," at p. 552.

But there are roads other than the dis-turnpike roads to which reference has been made which fall within the description of main roads. Section 15 of the Act of 1878 provides that where it appears to any highway authority that a highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority for an order declaring such road to be a main road, and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and if satisfied that it ought to be a main road shall make an order accordingly. It will be observed that the duty cast upon the county authority by this section is imperative, but the section goes on to provide that a copy of the order so made shall be forthwith deposited at the office of the Clerk of the Peace of the county, and shall be open to the inspection of persons interested at all reasonable hours, and the order so made shall not be of any validity unless and until it is confirmed by a

further order of the county authority made within a period of not more than six months after the making of the first-mentioned order. A further condition was imposed by the Act of 1888, s. 11 (3) of which provides that where a county council declares a road to be a main road such declaration shall not take effect until the road has been placed in proper repair and condition to the satisfaction of the county council.

This power of declaring ordinary highways to be main roads has been acted upon by different counties in different ways. Some counties have exercised the power given to them to a very large extent. Indeed, in some cases, they have practically adopted most of the roads in the county as main roads; while in other counties the power has been sparingly exercised. The effect of the Act of 1888 is that the main roads now chargeable to the county under the provisions of that Act hereafter noticed, consist of the dis-turnpiked roads and the declared roads already described. It should be added, however, that any road constructed by a county council to whom the Road Board has made an advance for that purpose becomes a main road.

(To be continued.)

Some Modern Criminal Legislation.

By Sir TRAVERS HUMPHREYS.

(Continued from Vol. 70, p. 1232.)

The Prevention of Crime Act, 1908, as originally drafted, was an effort on the part of its authors to bring about two results, i.e., the establishment of Borstal Institutions for youthful offenders whose "criminal habits or tendencies or association with persons of bad character" make them unfit subjects for release on probation, and at the other end of the scale the introduction into this country of the "indeterminate sentence," the success of which in America is loudly proclaimed by its supporters. Borstal Institutions have proved a success, that is in the case of boys. For some reason the experiment in the case of girls is not regarded by those who are in a position to express an opinion as equally successful, so much so that the minimum term of detention has been increased by s. 11 of the Criminal Justice Administration Act, 1914, from one to two years, while by s. 10 of that Act power is given to a court of summary jurisdiction, on convicting a youthful offender, to commit him or her to the next Quarter Sessions with a view to a sentence of detention in a Borstal Institution being passed if the court of quarter sessions regard the case as a suitable one. The notion of an "indeterminate sentence" did not meet with the approval of Parliament, and the second part of the Act, dealing with habitual criminals, only permits of a maximum sentence of ten years' "preventive detention" while the many pitfalls provided in the Act for learned and unlearned chairmen of quarter sessions, together with the manifest dislike on the part of many judges to the whole idea of "preventive detention" have combined to render the Act of little use in relieving respectable citizens from the depredations of habitual criminals.

The following figures, taken from the criminal statistics for 1924, are given without comment:—

Number of persons undergoing preventive detention on 31st December, 1924	153
Number of persons sentenced to preventive detention during 1924	38
Police return of habitual criminals at large on 7th October, 1924	2,867

The Punishment of Incest Act, 1908 is only deserving of notice on account of the terms of s. 5: "All proceedings under this Act are to be held in camera." The experiment was universally condemned and the section was repealed by the Criminal Law Amendment Act, 1922.

The Criminal Law Amendment Acts of 1912 and 1922 have rendered the lot of the brothel-keeper increasingly hard. The penalties of £20 for a first offence and £40 for a second offence have been increased to a maximum of £100 for a first and £250 for any subsequent offence, while a second conviction now renders the offender liable to six months' imprisonment with hard labour. The Act of 1912 also strengthened the law against persons concerned in that detestable trade known as the "white slave traffic." Sub-section (4) of s. 7 of that Act introduced a much-needed amendment of the law, in rendering liable to punishment under the Vagrancy Act, 1898, females who are proved to have "for the purpose of gain exercised control or influence over the movements of a prostitute," thereby putting the procuress or female pimp in the same position as the male who is proved to have "knowingly lived on the earnings of prostitution." The Vagrancy Act, 1898, only applied to a male person. Some of the worst offenders in this respect have been women, and not infrequently the mothers of the girls in question. The same Act in s. 3 provides that male persons may in addition to imprisonment be sentenced to be flogged on conviction under s. 2 of the Criminal Law Amendment Act, 1885, for the offence of "procuring" a girl to become a common prostitute—to leave the Kingdom in order to enter a brothel abroad—to leave her home in order to enter a brothel within or without the King's Dominions, or—in the case of a girl under twenty-one not of known immoral character—to have unlawful connexion with any male person other than the accused.

By s. 7, s-s. 5, the same punishment of flogging may be ordered to a male person who is convicted for the second time of an offence under the Vagrancy Act, 1898, that is "knowingly living on the earnings of prostitution," or "persistently soliciting for immoral purposes."

So far as the present writer is aware, this is the first occasion since 1863 on which Parliament has approved of the penalty of flogging—except when re-enacting the existing law in the Larceny Act, 1916.

The date referred to is, of course, that of the passing of "An Act for the further Security of the Persons of Her Majesty's Subjects from Personal Violence," commonly known as "the Garroter's Act." If the principle of flogging as a form of punishment is once accepted, it will be generally agreed that no class of persons more richly deserves it than that which includes the *souteneur* and the male prostitute, but to be logical the same punishment should surely be permissible in the case of a man who is convicted of the violation of a child under thirteen, the rape of a girl under sixteen, or the offence created by s. 3 of the Criminal Law Amendment Act, 1885, which consists in the procuring of the defilement of a female by threats or fraud or the administration of stupefying drugs. Many persons would no doubt add to the above list any offence which involves the intentional and persistent corruption of the mind of a young person of either sex.

The Criminal Law Amendment Act, 1922, contains one section (s. 2) which it is to be hoped will not afford a precedent in drafting future Acts. Judicial criticism has more than once been directed to the clumsy form of the proviso which to the ordinary mind is indeed difficult to understand. The section provides that reasonable cause to believe that a girl was of or above the age of sixteen years shall not be a defence to a charge under ss. 5 or 6 of the Criminal Law Amendment Act, 1885. The sections referred to deal with the offences of carnal knowledge of a girl under sixteen and the permitting by a householder of the defilement on his premises of such a girl. The proviso is as follows:—

> "Provided that in the case of a man of twenty-three years of age or under the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a valid defence on the first occasion on which he is charged with an offence under this section."

Why, one may ask, "on the first occasion" only, since the onus is on the accused to establish the reasonableness of his belief in the particular case? Why, for instance, should a man, whether of or under the magic age of twenty-three, who has once been acquitted on a charge under s. 5 of the Act of 1885, be presumed on that account to be less likely to be deceived as to the age of some other girl? The section in question strikes one as a particularly unfortunate example of legislation by compromise.

The Prevention of Corruption Act, 1906, making penal the giving to or receiving by agents of what are usually known as secret commissions has, it is believed, had a most salutary effect. When both parties to a corrupt bargain are equally to blame, it is probably true that no legislation is likely to interfere with the carrying out of the illegal arrangement. On the other hand, the definite prohibition under severe penalties in an Act of Parliament of a practice which honest men have always condemned may be most useful to a business man. Solicitors will be the best judges of whether this Act has not on occasions enabled commercial men to withstand demands or suggestions which they would otherwise have found difficulty in resisting at the price of the loss of valuable business.

(To be continued.)

The Courts of Scotland.

(Continued from Vol. 70, p. 1233.)

Trial and Verdict.

As soon as the panel takes his place at the bar the record of the pleading diet is read, and he may retract any plea there stated. Any preliminary objections are disposed of, including any plea in bar of trial. The English pleas of *autrefois acquit* and *autrefois convict* become the *panel has tholed his assize*. If the *panel* adheres to his plea of not guilty, the jury is empanelled. The jury number fifteen and are drawn in the proportion of one special to two common jurors. The Crown and the *panel* have each five peremptory challenges and an unlimited number on cause shown. Evidence for the Crown, followed by that for the *panel* is then led. It is recorded by an official shorthand writer. Counsel do not usually make an opening statement. At the conclusion of the evidence counsel for the Crown addresses the jury, followed by counsel for the *panel*. This is the invariable rule, and the Crown have no right of reply. After the judge has charged the jury, the jury deliberate in open court or retire for that purpose. The verdict is announced in open court and recorded by the clerk. Once recorded the verdict cannot be altered. It need not be unanimous, but may be by the narrowest majority. It may be "Guilty as libelled," "not guilty," or "not proven." This last verdict always occasions comment among English colleagues. It simply means that in the minds of the jury the Crown have failed to discharge the onus laid upon them of satisfactorily proving the guilt of the *panel*, but that the jury nevertheless are not entirely satisfied of the accused's innocence. As it entitles the accused to acquittal and dismissal from the bar, and would entitle him to plead that he had *tholed his assize* in the event of an attempt to try him on the same charge on better evidence, the verdict of "not proven" is difficult to defend logically. If the verdict is guilty the Crown must move for sentence.

Criminal trials of indictable offences in the sheriff court follow the same lines as those outlined in the High Court of Justiciary. Formerly certain forms of appeal were open to the *panel* to the Justiciary Court but appeals from sheriff and jury trials will now go to the Court of Criminal Appeal set up under the new Act.

This is the only means of bringing an accused person to trial on indictment in Scotland. There are no coroners' inquests, and no preliminary examinations before a magistrate with all their attendant publicity, and grand juries with their more or less work of supererogation are unknown. It has been suggested that too much is thereby left to the discretion of the Crown. But the mere fact that in these enlightened days there has been no serious criticism of a system that has practically undergone no notable change since 1887 is surely sufficient answer for the Crown. The system makes for inexpensive administration, while providing adequate safeguards for a fair trial to the accused in a procedure the keynote of which is simplicity.

Courts of Summary Jurisdiction.

These comprise the Sheriff Summary Criminal Court, Burgh Courts, Police Courts, and Justice of Peace Courts. All these courts have concurrent jurisdiction to try the minor common law crimes, police offences, and most statutory offences that are merely of a prohibitive nature. Procedure in each with a minor exception in the case of the Sheriff Summary Criminal Court, is the same, and is regulated by statute. The Sheriff sitting summarily (unless a wider power is conferred under the statute libelled in the complaint) can impose a fine up to £25 or order imprisonment up to three months. Where the accused has two previous convictions the Sheriff can in certain cases sentence him to six months' imprisonment with or without hard labour. In common law offences the other courts mentioned are limited to fines up to £10 and imprisonment up to sixty days with or without hard labour. Provision is made to enable the presiding magistrate in the other court, if it appears to him at any stage that the crime he is trying is one calling for greater punishment than he can impose, to have it removed for trial in the Sheriff Court.

In addition to the Procurator Fiscal who conducts all prosecutions in the public interest in the Sheriff Court there is usually in every police burgh a burgh prosecutor. He is generally a practising solicitor. He prosecutes in all police offences and minor common law crimes in the Burgh and Police Courts. Further acting in the same capacity within his district is the Justice of Peace Fiscal attached to every Justice of Peace Court district. Private prosecution is also competent in courts of summary jurisdiction, but in cases in which imprisonment without the option of a fine is competent such prosecution requires the concurrence of the Procurator Fiscal or Burgh Prosecutor. Private prosecutions are usually limited to contraventions of special statutes which in a strict sense are not classed as in the public interest. The procedure in these courts follows largely that prevailing in the higher courts, except that it is, of course, summary and lacking in the necessary formalities associated in trials by judge and jury.

Proceedings commence with a complaint addressed to the court setting forth the charge against the accused in short form and libelling any previous convictions. In the case of statutory offences the penalty that may be competently imposed is added. Great latitude is allowed in drawing the complaint and making amendments thereon so long as the accused is not thereby prejudiced. The complaint is signed by the prosecutor and concludes with a crave for warrant to cite the accused to appear or to apprehend him. The accused on arrest is entitled to professional assistance but in these courts the assistance of the solicitor for the poor is not available. The accused must be brought before the magistrate within forty-eight hours, but if inquiry be necessary he may be remanded from time to time without being called upon to plead for periods not exceeding in all seven days or on special cause shewn fourteen days. This rarely happens as the accused is usually allowed his liberty on bail. In this connection the police have wide powers of release on minor offences on what is known as "Pledge." This is a sum lodged with the police as security for the accused's appearance for trial. As the pledge is usually the amount that would normally be imposed as a fine in the class of offence committed the matter usually ends by forfeiture of the pledge

if the accused does not appear. If however the matter is more serious than at first appeared the prosecutor can always apply to have the pledge forfeited and a warrant issued for the apprehension of the accused.

At the first calling of the case in the ordinary way the complaint is read over to the accused and he is asked to plead. Before pleading he must take any objections to the competency or relevancy of the complaint or proceedings. If he fails to do so he cannot take such objections at any later stage. The objections, if any, are noted on the complaint. If the accused pleads guilty he may be sentenced at once or sentence may be deferred to an adjourned diet. If he pleads not guilty the court may proceed to trial at once, unless on the motion of either party the magistrate grants an adjournment. In the sheriff summary court the case is usually adjourned to a future diet. Where the accused has been brought before the court in custody he is entitled to an adjournment of forty-eight hours as a matter of right. Elaborate provisions exist where the accused fails to appear at any diet as to trial in absence. The same wide discretion exists as in England in regard to finding caution: dismissing the accused with an admonition without recording a conviction, and putting the accused on probation. Provision also exists for the holding of children's courts. Penalties imposed are recoverable by civil diligence as also any expenses awarded. At the trial the accused may be represented by counsel or solicitor, and the procedure follows closely that obtaining in the higher courts.

Appeal.

Appeal from the judgment of a court of summary jurisdiction is to the High Court of Justiciary. It is generally made by way of stated case and practically brings under review every matter decided by the inferior court save findings in fact, unless the case is referred back for further evidence or is quashed on account of some evidence wrongly admitted. Application must be made at the time of judgment or within five days thereafter, and the appellant must consign a sum to be fixed by the court to meet any penalty and the expenses of the appeal if he fails. If the appellant is in custody he may be liberated on bail and has a right to appeal to the High Court on the question of the sum fixed for bail. If after liberation he does not in the ordinary course proceed with his appeal, the lower court grants warrant for his apprehension and he serves his sentence as if no appeal had been lodged. Within ten days of the appeal being intimated the clerk of court must prepare a case and send a copy to the appellant and the respondent. If the parties fail to adjust the case within one month of the draft being so sent to them, the terms of the case are adjusted by the judge against whose judgment the appeal is being taken. The appeal is thereafter heard by the High Court on as early a date as possible, and the appellant, except in certain limited cases, must be personally present. The court may quash the conviction or convict where the lower court has failed to do so, and the appeal is at the instance of the prosecutor. The court may also merely express their opinion and remit to the lower court with instructions, or where the appeal is on the grounds of some irregularity of the proceedings in the lower court they may, before giving judgment, remit to some fit person to inquire and report in regard to the facts and circumstances of the cause under appeal.

Compulsion and Coercion.

Section 43 of the Criminal Justice Act, 1925, abolishes the presumption in favour of a married woman that an offence committed by her in the presence of her husband is committed under his coercion, but leaves as a good defence, to be affirmatively proved, in cases other than treason or murder, that the offence was committed in his presence and under his coercion. Comment upon this section has shown a certain confusion between that compulsion which, if proved, is a defence for any person, and the special form of compulsion evidence of which it is the particular privilege of a married woman to offer as a defence. It is important that the difference between the two should be clearly apprehended.

"Compulsion" and "coercion" are, in ordinary language, synonymous words. But usually, in the criminal law, "compulsion" is the term applied to the effect of threats of immediate violence which excuse any offender (though not any offence), while "coercion" is reserved for the vaguer and wider notion affecting the married woman. This discrimination of the terms is so convenient that it merits general adoption; it will be observed throughout this article.

Stephen's "Digest of the Criminal Law," 7th ed., Art. 42, says, under the heading of "Compulsion": "An act which, if done willingly, would make a person a principal in the second degree, and an aider and abettor in a crime, may be innocent if the crime is committed by a number of offenders, and if the act is done only because during the whole of the time in which it is being done the person who does it is compelled to do it by threat on the part of the offenders instantly to kill him or to do him grievous bodily harm if he refuses . . ."

The Draft Code of 1879, Art. 23 (which the Commissioners in Note A—p. 43—said expressed what they thought was the existing law, and what at all events they suggested ought to be the law) is in somewhat different terms: "Compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence shall be an excuse for the commission of any" [indictable—for the Code relates only to such] "offence other than high treason, murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson: Provided that the person under compulsion believes that such threat will be executed: Provided also that he was not a party to any association or conspiracy the being party to which rendered him subject to such compulsion."

The Digest apparently contemplates at least two offenders other than the person compelled; the Draft Code recognises the possibility of there being one real offender only. Both summaries of the law are largely based on the trials for high treason after the Rebellion of 1745, the Draft Code being the better expressed statement of the law; but the words of the Commissioners that it is what the law "ought to be" seems to indicate a doubt which can be solved only by authority. The Commissioners said that "the case of a person setting up as a defence that he was compelled to commit a crime is one of every day occurrence," a statement which, one cannot help thinking, is much exaggerated; it certainly tallies neither with experience of to-day nor the absence of modern authority on the point.

The defence of compulsion would obviously be open to a wife acting under a threat of immediate violence as well as to any other accused person. In addition, she has something else, which, by reason of its always being presumed without inquiry, has escaped definition. There seems to be an entire absence of authority as to what constitutes coercion excusing crime, and prior to the Criminal Justice Act, 1925, it was even very doubtful to what offences it applied. The latter difficulty has been cleared up. The defence applies to *any offence* other than treason or murder, that is, to any offence, other than those two, whether indictable or summary. The former difficulty can be cleared away only by a process of judicial definition. Even the report of the Committee which dealt with the matter in 1922, after the *Peel Case*, was silent on the point.

Article 42 of Stephen's Digest, by noting as an exception to the defence of compulsion that "threats of future injury or the command of anyone not the husband of the offender do not excuse any offence," seems to imply that a husband's

threat of future injury, or command, to his wife would excuse her.

During the discussion of the clause in Parliament the Solicitor-General said it would give her a rather wider and more extended line of defence than pure compulsion, because coercion imports coercion in the moral, possibly even in the spiritual, realm, whereas compulsion imports only something in the physical realm. This is, of course, only the language of debate, and as such not authoritative, but it appears to be sound. Presumably if a husband could so impose on a silly wife that he made her believe she would go to hell if she did not obey him, and then reinforced that spiritual terror with his gloomy presence during her criminal act, she could, in the legal sense of the term, be said to be coerced.

A criterion which has been suggested in one of the recent text-books on the Criminal Justice Act, 1925, is that the wife (who must show she acted in her husband's presence and under his direction) acted in reasonable fear of painful consequences, or was so subject to her husband that she had no real will of her own. It is added that coercion would include previous ill-usage designed by the husband to enforce compliance with his criminal purposes generally, whether this operated by breaking her spirit or arousing fear of future ill-treatment. The reduction of the wife to a meek state in which she habitually followed his instructions would operate as coercion on a particular occasion. A threat to starve her and her children would probably be enough, as might perhaps be a threat to quit her for another woman.

The sort of treatment meted out by BILL SIKES to the unhappy NANCY would have been coercion had she been his wife. Even when trying to do right "a vision of SIKES haunted her perpetually," and he had boasted to FAGIN that he thought he had "tamed" her.

However fully the subject be discussed, it is impossible to forecast all possible combinations of circumstances. A jury must be directed, and justices must direct themselves, to consider the whole facts of the particular case. Decisions of the Court of Criminal Appeal are not likely to be many, for acquittals on the ground of "coercion" will not be questioned, but possibly on some appeal against conviction the Court will undertake an explanation of the doctrine, to act as guidance to lesser courts. The tendency towards the equality of the sexes will probably operate to limit the doctrine rather narrowly.

Workmen's Compensation:

The Acts of 1923 and 1925.

[COMMUNICATED.]

IT has long been the practice of judges to comment upon the incompetency of the draftsmen who framed the various Acts relating to Workmen's Compensation. How far such comments are justified is a matter of opinion; but it may well be that the judges who condemn are not themselves free from blame in declining to give effect to plain words because doing so would involve what appears to their minds to be a miscarriage of justice. It is an easy method of meeting a hard case, or what seems a hard case, to subtly strain the words of an Act or quietly ignore particular words in order that in a single case it may not be said that the court has decided in violation of what appears to be the common-sense view of the matter. Such decisions have the effect of crowding the Law Reports with a vast number of cases, many of which seem to be in conflict with others, and of adding enormously to the difficulty of legal advisers to say exactly what are the rights of their clients, apart from the huge costs entailed in getting a final decision from the ultimate Court of Appeal. The poor draftsman may be responsible for not expressing the intentions of the Bill he is drafting in clear and unambiguous language, but at least it should be remembered in his favour that the Bill, when it leaves his hands, is one thing, and that the finished Act of Parliament, after constant amendment and re-amendment in Parliament itself, is another.

A recent case before the House of Lords which gives ground for these reflections is that of *Davies* v. *The Ocean Coal Co. Ltd.* The point involved in that case was the true interpretation of s. 14 of the Workmen's Compensation Act, 1923. The section first came up for consideration in the case of *Davies* v. *The Glyn-Corrwg Colliery Co.*, 1925, 2 K.B., p. 339. That case came before the Court of Appeal, consisting of the MASTER OF THE ROLLS, BANKES and SARGANT, L.JJ., and decided that s. 14 of the 1923 Act "had introduced a new liability upon the employer to the advantage of the workman," the meaning of this phrase being that only in one of the five methods contemplated by the section could an employer terminate a weekly payment. The five methods in question were: (*a*) Agreement, or (*b*) Arbitration, (*c*) where the workman has actually returned to work, (*d*) where the weekly earnings of a workman in receipt of a weekly payment in respect of partial incapacity have actually been increased, and (*e*) where the employer has obtained and served on the workman a medical certificate that he has wholly or partially recovered, and the employer, in case of disagreement by the workman's doctor, follows the procedure provided in the section and the provisoes thereto. The decision of the Lords Justices appeared to be perfectly sound. The Master of the Rolls, in his judgment, defined the scheme of the Act, and one would have supposed his words were a complete justification of the draftsman of the Bill.

However, soon after, in the case of *The Ocean Coal Co. Ltd.* v. *Davies*, the same, or practically the same, question arose again before the Court of Appeal, consisting of BANKES, SCRUTTON and ATKIN, L.JJ., on appeal from the county court judge of Bridgend. In that case the workman had been suffering from miner's nystagmus, and had been paid compensation at varying rates down to the 3rd September, 1925, on which date the employers, without acting under any of the provisions of the Act of 1923, had stopped payment against the will of the workman. The employers thereupon commenced arbitration proceedings, and before the hearing it was admitted on behalf of the workman that he had in fact recovered from the disease by the 3rd September. The county court judge, regarding himself bound by the decision in *Davies* v. *The Glyn-Corrwg Colliery Co.*, made an award in favour of the workman down to the 27th October, 1925, the date of hearing, the effect of this award being to give the workman a right to the continuance of the weekly payment from the 3rd September until the 27th October, the judge incidentally holding that as he had, under s. 14 of the 1923 Act, no power to award cessation of the weekly payments on any date antecedent to his award, the case of *Gibson* v. *Wishart*, 1915, A.C. 18, had no application. Section 14 of the 1923 Act was regarded by him as stating the only cases in which a weekly payment might be ended by an employer. This decision did not satisfy the employer, and he resorted to the Court of Appeal.

On the matter coming before the Court of Appeal the case of *Davies* v. *The Glyn-Corrwg Colliery Co.* had to be got over. Lord Justice BANKES was himself a member of the court, and was naturally confronted with his judgment in the *Glyn-Corrwg Case*. The appeal was dismissed, the court regarding itself as bound by the decision referred to, but all three Lords Justices, by their language, invited an appeal to the House of Lords, none of them, however, pointing out in what respect that decision differed from the case then under appeal. The next step in this costly litigation over a few pounds was the lords' appeal, which was heard by Lords DUNEDIN, SHAW, ATKINSON, WRENBURY and CARSON quite recently. The point argued was that s. 14 of the new Act contained a complete code of the methods by which a weekly payment to an injured workman

could be ended by an employer. The principal argument *contra* was that of hardship. Here, it was said, the employer found himself bound to make weekly payments for seven weeks after the workman had admittedly recovered, and that it was quite conceivable that in other cases such a liability might continue for months if an arbitrator had no power to make a retrospective award. On the contrary, it was argued that s. 14 was clear in its terms and that, save "in pursuance of an arbitration," or one or other of the remaining four methods, no weekly payment could be stopped by an employer. However, after reserving its judgment, the House decided in the appellants' favour by four to one; Lord DUNEDIN delivered a dissenting judgment, feeling that the case had been rightly decided by the four judges who had considered it. The argument of hardship prevailed, and Lord ATKINSON, in particular, spoke of the Workmen's Compensation Acts being designed to compensate an injured workman suffering in his earning power from the effects of an injury and not to make his employer pay him "a dole." He also animadverted upon the draftsman of the Act, saying in substance that he had achieved something which he did not intend to achieve if the interpretation sought to be put upon the section was the correct one. The noble lord made an excellent debating speech, which, if made when the Bill was going through Parliament, might have prevented the hardship involved. He disposed of the argument that a payment stopped in September cannot be said to have been stopped by an arbitration not held until several weeks later by saying that "in pursuance of an award" simply means "doing what an award in an arbitration entitles him to do." It is difficult to see how "in pursuance of" can mean doing in September what the award says he must not do until October.

So the matter stands, and once more the clear explicit language of an Act of Parliament is disregarded in the interests of "hardship." What the effect of the decision will be, save in cases of precisely the same kind, it is not easy to see. It was not necessary to over-rule *Davies* v. *The Glyn-Corrwg* in terms, and it may well be that in a similar case that decision will be binding. It does seem a pity that the decision is now recorded, for it is clear that if the employers had only proceeded under s. 14 of the 1923 Act and had served a medical certificate under the terms of s. 14 (*c*) there could have been no hardship entailed upon the employer, as he had full power to pay into court, and so protect himself until his dispute with his workman had been settled in accordance with the provisions of the Act.

The Legitimacy Act.

THE Legitimacy Bill has now received the Royal Assent, and we may briefly review its main provisions. Section 1 legitimates illegitimate issue, where their parents marry subsequently, subject to two important qualifications, viz.: (*a*) the father of the illegitimate child must have been domiciled in England or Wales at the date of the marriage; and (*b*) neither the father nor the mother of the illegitimate person must have been married to a third person at the date of the birth of the child. Such legitimation will date from the commencement of the Act (1st January, 1927) or the date of the marriage, whichever last happens.

Where such legitimation *per subsequens matrimonium* takes place, the Act casts a duty on the parents to see that the birth of the child is re-registered with the Registrar-General, but failure to perform this duty does not affect in any way the legitimation of the child.

Section 2 provides for the bringing of declarations of legitimacy in respect of legitimated persons, and the procedure under the Legitimacy Declaration Act, 1858, as far as possible is to apply. It should be observed, however, that the county courts are also given jurisdiction to hear these petitions, though the taking of such proceedings in the county court is at the option of the petitioner.

For the purposes of succession on intestacy, legitimated persons are in general to be treated for all practical purposes as if they had been born legitimate. Where it is a question of a legitimated person succeeding on an intestacy, the above rule will only apply where the intestate dies after the date of legitimation, so that if the legitimation takes place after the death of the intestate, no rights in the property of the intestate will be acquired by the legitimated person. *E converso*, where a legitimated person dies intestate, in considering who are the persons entitled to succeed to his property, the intestate must be regarded as if he were a person who was *born* legitimate: s. 4. In other words, the legitimation for this purpose will have a retrospective effect, dating back to the actual date of birth.

Where the rights to any property depend on the relative seniority of the children of any person, and among those children are one or more legitimated person or persons, the latter will rank as if the date of their legitimation were the date of their birth: s. 3 (2).

The interests of the spouse, children and remoter issue are further safeguarded by s. 5, as far as rights in property are concerned. That section deals with the case where the illegitimate child fails to be legitimated by reason of his dying before the marriage of his parents. In such an event the rights of the spouse and issue, in respect of any property or succession, are to be determined as if the deceased was legitimated, the date of the marriage of the parents being regarded as the date of the legitimation.

Legitimation, however, is not without its corresponding disadvantages, since a legitimated person will be under the same obligations of support of himself and any other person (e.g., his natural grandparents), as if he had been born legitimate: s. 6.

Prior to this Act, inasmuch as an illegitimate child was regarded as *nullius filius*, no person had a right to claim his property by way of intestate succession, unless they were issue. Thus neither the father or the mother of the bastard would be thus entitled. Similarly, neither had the illegitimate child any claims on the property of his natural parents on their intestacy. Section 9 of the Legitimacy Act now introduces important alterations in the law. Thus, an illegitimate child may now be entitled to succeed to the property of his or her natural *mother* (but not father), if she dies intestate, *and if she does not leave any legitimate issue*, and, conversely, the natural *mother* (but not father) has the same rights to the property of her natural child, dying intestate, as if the child was legitimate.

Section 8 should be carefully noted, because it affects the principle of *Re Wright's Trusts*, 1856, 25 L.J. Ch. 621, in which it was held that for the purpose of succession to moveables, a child would not be regarded by our courts as being legitimated *per subsequens matrimonium*, unless the law of the domicil of the father *at the date of the birth* permitted of such legitimation. It might also be incidentally noted that it is further necessary to show that the law of the domicil of the father, *at the date of the marriage*, as well, permits of such legitimation: *In re Grove*, 1887, 40 Ch. D. 216. Now, however, by virtue of s. 8 (1) of the Legitimacy Act, a child whose father is not domiciled in England or Wales at the date of the marriage will be regarded as legitimated *in England and Wales per subsequens matrimonium*, provided that the law of the domicil of the father at the date of the marriage *only* recognises such legitimation, and it will be immaterial that such legitimation is not permitted by the law of the domicil of the father *at the date of the birth* of the child.

Administration of Drugs Under Direct Personal Supervision.

THE short point, which the Divisional Court decided in the extremely interesting case of *Kingsbury* v. *Director of Public Prosecutions*, *The Times*, 12th November, 1926, was whether, in order that a drug should be administered "by or under the direct personal supervision" of a medical practitioner for the purposes of the proviso to Regulation 4 of the 1921 Regulations made under s. 7 of the Dangerous Drugs Act, 1920, it was necessary that the practitioner should administer every dose by his own hand, or that the doctor should be present and either see the patient administer each and every dose to himself, or see the nurse or other person administer such dose to the patient. Regulation 9 of the above Regulations provides that a medical practitioner, who records in a day-book particulars of any of the drugs supplied by him to any patient, together with the name and address of the patient and the date of the supply, may in lieu of keeping the register (required generally by that regulation) enter in a book to be kept for the purpose references under the appropriate dates to the records in the day-books. But by the proviso to Regulation 4, administration of the drug "by or under the direct personal supervision of a duly qualified medical practitioner," is not to be deemed a supplying of the drug within the meaning of the fourth and subsequent Regulations of the above Regulations.

Now, in *Kingsbury's Case*, it appeared that the appellant was treating two patients who were addicted to morphine, the method of treatment being the gradual reduction of the dose. The appellant saw his patients every other day, and on each visit left with the patient the necessary supply of morphine for the proper doses to be taken on that and the succeeding day. The drug was never entrusted to any other person. Although the appellant never actually saw the patient take the drug, he was in a position to tell, from the condition of the patient, whether a greater quantity than the dose prescribed had been taken. The appellant did not keep a register, as he considered that the regulation as to keeping a register did not apply to him, and he refused to divulge the names and addresses of the patients who were being treated by him, considering that such disclosure might prove detrimental to the patients under his treatment.

The Divisional Court, on a consideration of the Regulations as a whole, came to the conclusion that the above proviso did not require the medical practitioner to administer the drug with his own hand, or to be present, when the drug was being administered to the patient, whether by himself or by a third person, and in the circumstances they held that there had been direct personal supervision.

The meaning of the expression "administration" has been previously considered by the courts in criminal cases in which the charge has been one of feloniously administering poison. In *R.* v. *Harley*, 1830, 4 C. & P. 368, where a servant put poison into a coffee pot containing coffee, and on her mistress coming down to breakfast pointed out to her the poisoned coffee as having been prepared for her, the court was of opinion that there had been an "administering" contrary to s. 11 of 9 Geo. 4, c. 31. In his summing up in that case (*ib.*, at p. 372), Mr. Justice PARK clearly expressed himself as being of opinion that in order to constitute an "administering" it was not necessary that there should be a delivery by the hand.

Again, in *R.* v. *Michael*, 1840, 9 C. & P. 356, the judges were similarly of opinion that an actual administration by the prisoner's own hand was not necessary to constitute an "administering." In this case it appeared that the prisoner purchased a bottle of laudanum, and instructed a third person (who, however, was unaware of the poisonous contents of the bottle), to give her (the prisoner's) child a teaspoonful of the contents every night. This person did not do so, but left the bottle on the mantelpiece, where another child found it and gave part of the contents thereof to the prisoner's child.

Although these cases may have a bearing, they cannot be regarded as conclusive, upon the meaning of similar expressions employed in different enactments, such as the Dangerous Drugs Regulations, and it might be noted that in arriving at the conclusion which they did in *Kingsbury's Case*, the Divisional Court would appear to have been guided solely by a consideration of the Regulations themselves.

A Conveyancer's Diary.

BY J. R. PERCEVAL MAXWELL.

(*Continued from Vol.* 70, *p.* 1234.)

INTRODUCTORY.

The first article on this subject dealt mainly with the general powers of trustees and personal representatives over infants' property, the effect of the statutory vesting provisions on the legal estate in land where, before 1926, the land was held by personal representatives for the benefit of infants, and where, before 1926, infants were beneficially entitled to land in undivided shares.

It is now proposed to deal with the effect of these vesting provisions in the other cases where infants became entitled to an interest in land before 1926.

VESTING OF LEGAL ESTATES ON THE 1ST JANUARY, 1926.

Before 1926, land to which infants were beneficially entitled was generally settled land under S.L.A., 1882, ss. 59 or 60, and the S.L.A. powers were exercisable by the S.L.A. trustees, if there were any, or by trustees specially appointed under s. 60.

In the relatively few cases where these sections did not apply, *e.g.*, where the infant's interest was contingent (*Re Horne*, 1888, 39 Ch. D. 84) the court could, on the application of the infant's guardian, appoint a person to convey under C.A., 1881, s. 41, and S.E.A., 1877: *Re Sparrow's S. E.*, 1892, 1 Ch. 412.

Now, in every case where an infant is beneficially entitled to land in possession for an estate in fee simple or for a term of years absolute, or would, if of full age, have been "a tenant for life" (S.L.A., 1925, ss. 19 and 20), the land vests in the S.L.A. trustees, if any, upon trust to give effect to the beneficial interests of the infant and other persons, if any, interested: L.P.A., 1925, 1st Sched., Pt. III, 1; S.L.A., 1925, 2nd Sched., Para. 3.

The powers of a tenant for life are exercisable by the S.L.A. trustees during the minority: S.L.A., 1925, s. 26.

The provisions of the S.L.A., 1925, ss. 30 to 33 (as amended), are so wide that there cannot be many cases where there are no S.L.A. trustees: moreover these provisions have been enlarged by 2nd Sched., Para. 3, to include persons appointed under S.L.A., 1882, s. 60, to act generally or otherwise on behalf of the infant; but in the few cases in which there are no S.L.A. trustees, the legal estate vests in the Public Trustee until new trustees have been appointed or the Public Trustee has been asked to act and has accepted the trust: S.L.A., 1925, 2nd Sched., Para. 3.

It is generally considered desirable to appoint new trustees to act in place of the Public Trustee, and if there are no other persons able or willing to do so the infant's parents or parent or testamentary or other guardian, in the order named, may appoint new trustees without an application to the court; the legal estate vests in the new trustees, when appointed under an express or implied vesting declaration: S.L.A., 1925, 2nd Sched., Para. 3. The trustees so appointed must not be less than two, unless a trust corporation is appointed, or more than four: S.L.A., 1925, s. 94; T.A., 1925, s. 34.

The persons having power to appoint new trustees are also the proper persons to ask the Public Trustee to act if new

trustees are not to be appointed in his place: *ib.*, sub-para. (1) (iv).

If, for any reason, the persons above named are unable or unwilling to appoint new trustees, the infant, through his next friend, may apply to the court for an order appointing new trustees; the legal estate passes by the Act itself when the order is made without any vesting order: *ib.*

When new trustees have been appointed or the Public Trustee has been asked and has consented to act in the trust, a vesting deed should be executed containing the statements and particulars prescribed by S.L.A., 1925, s. 5; for until this is done the legal estate cannot be dealt with by the trustees, except where a purchaser has no notice that they are acting as statutory owners, which could not well occur in this case: *ib.*, s. 13, as amended by the L.P. (Amend.) A., 1926, Sched.

If the beneficiary attains full age before the new trustees have been appointed and before the Public Trustee has been requested to act and accepted the trust, the legal estate will automatically re-vest in him under S.L.A., 1925, 2nd Sched., Para. 3 (1) (v), without any conveyance.

Where a number of infants are entitled as above, as joint tenants, the same rules apply, except that the legal estate does not become divested from the Public Trustee under S.L.A., 1925, 2nd Sched., Para. 3 (1) (v), until all the joint tenants have attained full age; but if the joint tenants are entitled for their life, the adult joint tenant is tenant for life and entitled as such to have a vesting deed executed in his favour: *ib.* s. 19.

As soon as one of these joint tenants attain full age, s. 26 of that Act ceases to apply (*ib.*, s-s. (4)), but the Public Trustee or the new trustees when appointed, as the land remains settled land (s. 3), can exercise the S.L.A. powers under s. 23, unless the adult joint tenant (being a tenant for life) is entitled under s. 19 to have a vesting deed executed in his favour.

Joint Tenants (Adults and Infants).—We can now consider the vesting of legal estates which, before 1926, were vested in a number of persons beneficially, as joint tenants, some of whom were infants and some of full age.

In such cases the land vests in the persons of full age upon the statutory trusts: L.P.A., 1925, 1st Sched., Pt. III, Para. 2.

These trusts are defined in the L.P.A., 1925, s. 35 (as amended), and create a trust for sale.

This rule only applies where the joint tenants were entitled beneficially in fee simple, or for a term of years absolute: Pt. III, Para. 2; for these are the only legal estates that can now subsist in land. This paragraph does not apply to life estates in land which were legal estates before the commencement of the Act; these are now equitable interests.

Where on the 1st January, 1926, there were infants and adults who would together have been tenants for life had the infants been of full age (S.L.A., 1925, s. 19), then, under the L.P.A., 1925, s. 205 (1) (xxvi), 1st Sched., Pt. II, Paras. 3, 5, 6 (*c*), the legal estate vests in the adult tenants for life, the land is settled land and a vesting deed must be executed in their favour.

If one of the infants comes of age before this deed is executed he will be made a party to the deed and the settled land will be vested in him with the other joint tenants of full age.

Where the legal estate has become vested in an adult joint tenant on the statutory trusts or otherwise the equitable interests remain joint.

Where there is a statutory trust for sale, unless there are two or more adult joint tenants, additional trustees must be appointed; this can be done by the infant's parents or guardian.

The legal estate vests in the new trustees when appointed, and the adult beneficiary jointly by virtue of the Act itself without an implied or express vesting declaration: L.P.A., 1925, 1st Sched., Pt. III, 2.

There can be no severance of the joint tenancy so as to create undivided shares in land: L.P.A., 1925, s. 36 (3).

Trust and Mortgage Estates.—The L.P.A., 1925, 1st Sched., Pt. III, Para. 3, provides that where before 1926 infants were trustees, personal representatives or mortgagees, legal estates vested in them before 1926, or which would have become vested in them on the 1st January, 1926, if they had been of full age, shall vest in the Public Trustee until new trustees are appointed. This paragraph contains similar provisions as to the appointment of new trustees to that contained in the S.L.A., 1925, 2nd Sched., Para. 3. In addition it contains a power for the persons interested in the trust estate or in the mortgage debt to apply to the court for the appointment of new trustees.

The Public Trustee, without otherwise acting in the trust, may convey the property to any person entitled to call for a conveyance of the legal estate.

Paragraph 4 provides for a similar case where the legal estate in land became or was vested in trustees, some of whom were infants and some of full age.

In such cases the legal estate vests in the persons of full age upon the requisite trusts. Where there is only one adult trustee and no person able or willing to appoint additional trustees the parents or guardians of the infant may do so.

Legal Estates in Infants' Land after 1st January 1926.

It remains to consider the position of legal estates in infants' land after 1925.

The new Acts contain many provisions to ensure that infants cannot be made owners of legal estates in land, the general effect of which was summarised in the first article.

These provide for the effect of conveyances of legal estates expressed to be made to infants: see L.P.A., 1925, s. 19.

When it is intended to benefit infants by conveyances of land *inter vivos*, the land should either be conveyed to two or more trustees or a trust corporation upon trust for sale, or it should be settled in strict settlement by a trust deed and vesting deed. The power to entail personalty given by the L.P.A., 1925, s. 130, enables the proceeds of sale of land held on trust for sale to be entailed.

The land can be conveyed to trustees upon trust for sale, and the proceeds of sale can be entailed by a settlement of even date.

For this reason and because many of the former disadvantages incidental to trusts for sale have been removed by the L.P.A., 1925, it may be that a trust for sale will become the most frequently adopted method of settling of the land; moreover it will be remembered that where the land is settled a new vesting deed or assent is required on every change of legal ownership, whereas a conveyance on trust for sale holds good, with any appointments of new trustees, till the trust for sale is determined.

Under the L.P.A., 1925, s. 29, the trustees' powers of leasing and management may be delegated to the beneficiary when he attains full age.

Any power so delegated must be exercised in the names of the trustees.

Appointment of Infants as Personal Representatives.—After 1925 it will be impossible for infants to be made personal representatives, for the court does not grant administration to an infant, and if an infant is appointed executor of a will probate will not be granted to him until he attains full age; in the meantime no estate in the property passes to the infant: Jud. A., 1925, s. 165.

Trust Estates, Succession on Intestacies and Devises to Infants.—An infant cannot be appointed to be a trustee of any property: L.P.A., 1925, s. 20.

It is no longer possible for an infant to succeed to a legal estate in land on an intestacy, for the legal estate in an intestate's land vests in the administrator when appointed upon trust for sale: Ad. of E.A., 1925, s. 33.

Where a legal estate in land is devised to an infant, whether absolutely or for life, the land becomes settled land: S.L.A., 1925, ss. 1 (1) (ii) (d) and (2); and the personal representatives in whom the legal estate becomes vested on the testator's death cannot assent to the legal estate passing to the infant.

If a legal estate in land is held by personal representatives for two or more infants as joint tenants, and one of them attains full age, they may assent to the legal estate vesting in the adult.

If the joint tenants are entitled to the land for life the adult will be the tenant for life, and a vesting assent must be executed: S.L.A., 1925, s. 19. In other cases the assent should be to the adult upon trust for sale; see L.P.A., 1925, s. 19 (2). In this case it will usually be better for the personal representative to retain the land until two, at least, of the joint tenants have attained full age.

Where the land is settled land, if no S.L.A. trustees are appointed by the will, the personal representatives will be the S.L.A. trustees under S.L.A., 1925, s. 30 (3).

Where the S.L.A. trustees are not the same persons as the personal representatives, the latter, instead of vesting the legal estate in the S.L.A. trustees as statutory owners, may deal with the land under the directions of the S.L.A. trustees, but a purchaser for value is not concerned to see that these directions are complied with; nor are the personal representatives concerned with the propriety of the directions, provided that the transaction appears to be one authorised by the S.L.A., 1925, and capital money is paid to two trustees or a trust corporation: S.L.A., 1925, s. 26 (2).

Personal representatives will not usually execute a vesting assent to statutory owners but will wait until there is a tenant for life of full age.

Effect of Partition of Land held on Trust for Sale.—If land held on trust for sale is partitioned by the trustees to answer the share of an infant it will be retained on trust for sale: L.P.A., 1925, s. 28; this power can also be exercised by personal representatives: Ad. of E.A., 1925, s. 39; who have a further power of appropriation under s. 41.

Title to Infants' Property.—A short summary of the modes of making title on behalf of infants will be found in III "Prideaux," 22nd ed., 1006, but it must be borne in mind that if land is held in undivided shares in possession the provisions imposing a trust for sale will override all provisions which would otherwise apply, save where the legal estate is vested in personal representatives.

CONVEYANCER'S DIARY, 25th DECEMBER, 1926.

Erratum.—(I) Omit words "of the 3rd Schedule to" before S.L.A., 1925 (*Powers Exercisable by Personal Representatives*) on p. 1233. (II) Omit word "equally" in line 40, col. 1, on p. 1234. (III) Insert words "S.L.A., 1925" after s. 26, in line 42, col. 2, p. 1234.—J.R.P.M.

Landlord and Tenant Notebook.

Possession Required under Rent Acts for Purpose in Public Interest. —*Continued.*

There were required for a private scheme of reconstruction or improvement, it being proposed to adapt the premises to accommodate about fifty women in manufacturing ladies' clothing, and also to use them as a training school for employees, who would eventually be drafted into a factory, which was to be erected elsewhere. The court, however, held that the case did not come within the description of a scheme of reconstruction or improvement desirable in the public interest.

In his judgment (*ib.*, at p. 93), Lord Coleridge, J., said:—"It may well be that the proposed adaptation of the premises is desirable *in the interests of the proprietor and of those who would be employed*; but the *expression seems to imply something larger than a private interest or advantage.* By the use of the words 'scheme of reconstruction or improvement,' *something generally advantageous to the whole community is meant*, such, for example, as the widening of a street, the destruction of a 'rookery,' or some other well-defined public improvement."

Although the words "scheme of reconstruction or improvement" are not to be found in para. (*e*) of s. 4 "5" (1) of the 1923 Act, the above dicta of Lord Coleridge, it is submitted, would appear very appropriate in construing the meaning of the expression "public interest" as used in that provision; and it would seem that no purpose which is merely in the interest of an infinitesimal portion of the public, can be sufficiently in the public interest for the purpose of para. (*e*). It is further submitted that if the facts in *Mitchell* v. *Townsend* had to be considered in reference to para. (*e*), it could not be held that the purposes in that case were in the public interest.

Reference again may be made to the Irish case of *City of Dublin Cancer Hospital* v. *Brownrigg*, 1924, 58 Ir. L.T. Rep. 91, decided under s. 17 of the *Irish* Rent Act, 1923. That section provides, *inter alia*, that possession may be ordered, where "the premises are *bona fide* required for the purpose of a scheme of reconstruction or improvement, which appears to the court to be desirable *in the public interest*," so that in this respect it is practically identical with s. 13 (1) (*c*) of the Rent Act of 1920 (referred to above).

In the *City of Dublin Cancer Hospital* v. *Brownrigg*, *supra*, the premises were required in order to extend and enlarge a cancer hospital. But the court refused to hold that the scheme was one contemplated by the provision in question. In his judgment, Samuels, J., said:—"I am of opinion that a scheme to be held *desirable in the public interest*, must partake of a public character, such, for instance, as is carried out in pursuance of statutory powers or by municipal or similar authority, or some scheme of improvement or reconstruction in which the public generally or a particular community are, as citizens or inhabitants, interested. The reconstruction or extension of this hospital is not such a scheme as the section contemplates.

It is submitted that this decision gives too narrow an interpretation to the particular provision, under which it was decided. However that may be, it is submitted that it is a decision which should not be followed in any case which falls to be decided under para. (*e*) of s. 4, "5" (1), of the 1923 Act. In this latter provision, the words "scheme of reconstruction or improvement," are not to be found, and the insertion of these words, no doubt, has a limiting effect on the purposes which may be considered as being in the public interest. The omission of these words in para. (*e*) of s. 4 "5" (1), of the 1923 Act, would appear to have been intentional, with the object of giving that paragraph an exceedingly wide scope, so that purposes which might not be "in the public interest" for the purpose of such provisions as s. 13 (1) (*c*) of the 1920 Act, and s. 17 of the 1923 Irish Rent Act, may sufficiently be "in the public interest" for the purpose of para. (*e*) of s. 4, "5" (1), of the Rent and Mortgage Interest Restriction Act, 1923.

Correspondence.

Small Houses—Settled Land.

Sir,—In your issue of 23rd October last, you deal with the case of X, by pre-Act deed, conveying "the freehold" to A for life, with remainder to her two daughters (B and C), as tenants in common. You do not indicate the relationship of A to X, or of B and C to X.

Although it is not so stated, in so many words, one's inference would be that you were dealing with a small property owner, and those who take exception to the new conveyancing, do so on the ground of the considerable expense thrown upon A, B and C, who conjointly own the fee simple, and wish to convey it together. I hold no brief for the landowner, of substance, but I do plead for the small man.

Although it does not matter, from the point of view of the principles involved, the better instance to take if the writer of a "Conveyancer's Diary" were aiming at presenting a *typical* case, would be to assume that A, B and C acquired their respective interests *under a will*. The small man rarely makes *inter vivos* settlements. The writer of the diary then purports to show how unreasonable A, B and C are in objecting to the expense thrown upon them by "the new conveyancing." He uses these words :—

> "The method of making title by a tenant for life and remaindermen was fundamentally bad under the old practice. The purchaser had to investigate the title of the tenant for life and of each remainderman. In addition to that he had to see that the duties which would become payable on the death of the tenant for life were either paid, commuted or otherwise provided for. Why should he be called on to deal with these family matters? How could the Inland Revenue be expected to take off the charge, if the death duties remained?"

With every anxiety to be fair and impartial, I submit that this passage suggests that, *as regards death duties*, a purchaser will be "up against" difficulties *every time*. But how far distant is this notion from the truth? It is not an overstatement of the case to say that frequently parents leave their property to their children and grandchildren—whether by *inter vivos* deed, or by will, is immaterial.

Now, assuming that the settlor or testator was the grandfather of B and C, and the father of A (a not uncommon case), what relevance has the tirade of the diarist in favour of the new conveyancing, vis-a-vis, a purchaser.

It is true that the purchaser has got to investigate the title of A, B and C; but what does this involve? A cursory glance at the settlement, or at the probate.

If he finds, as appears plain on the face of the document examined, that A, B and C, own the whole, then he so decides in his own mind, and regards his "investigation" as an extremely simple affair.

But, it is not true, as Diarist leads one to believe, that, in the *normal* case, which I have quoted, any duty questions are involved at all. (*Vide* reply to *Q.* 587 in your issue of 11th December of this year). I find this reply wholly inconsistent with Diarist's statement, in your issue of 6th November last (p. 1082), when commenting on the suggestion of a correspondent: "That a tenant for life, who holds the fee simple as trustee, should be able with the concurrence of, say, not more than two remaindermen owning the equitable fee simple in remainder, to *force* (my italics) such title on a purchaser." Diarist then says :—

> "We have already mentioned that the making of such a title involves the commutation of succession duty, *and the setting aside of a fund to provide for the payment of estate duty which cannot be commuted.*
>
> "Such a retrograde step could not well be taken without giving back to the Inland Revenue their right to enforce the charge for duties against the purchaser: No one would welcome this!"

He who deals with "questions and answers," and Diarist appears to be speaking with two tongues, because the former, after quoting authority for the proposition that the estate duty payable on A's death is shifted to the proceeds of sale and is not a charge on the land purchased from A, B and C, observes "the remarks in a 'Conveyancer's Diary' apply to succession duty as to which a different principle prevails."

In the *Common* case, which I have instanced, there is no charge for death duties, because, *exhypothesi*, no succession duty is exigible, and, after the two tongues have composed their differences, it will be found that no *estate duty* is charged upon the *land* which the purchaser is acquiring. I respectfully submit, Mr. Editor, that your zeal for the new conveyancing leads you to overstate your case. It is not any charge for *estate* duty payable on A's death which stands in the way of a purchaser taking a conveyance from A, B and C, s. 13, S.L.A., is the offender which arbitrarily prevents the purchaser from getting the legal estate.

We solicitors plead for the small man, and wish to save him unnecessary expense. The writer of "Answers to questions" shows a true modesty in observing "advice on the practice under the Solicitors' Remuneration orders, may be given by a conveyancer with some diffidence" (*Q.* 571, 11th December, 1196), but we solicitors know full well that costs "loom large" under the new scheme, as applied to the small man.

Diarist, in referring to the "New method," observes—on the footing that the land was settled by deed *inter vivos* :—

> "The only necessary matters for putting the title in order are the execution of an appointment of S.L.A. trustees by the tenant for life (A), and the two remaindermen (B and C), which need not be under seal" (where the settlement is by will, different considerations arise)—"followed by a vesting deed by the S.L.A. trustees in favour of the tenant for life."

These two deeds constituted *an additional* expense to the "small man," without conferring any kind of advantage on A, B and C, *as vendors*, or conversely, say, on A, who buys the property back from D, the purchaser from A, B and C. Yet Diarist observes :—

> "It is not too much to predict that the self-same landowners who are anxious to sell, but who object to making their title a good one, when they come to acquire land will think differently" (23rd October, p. 1037).

I will deal with the "Costs" in a subsequent letter.

I should appreciate your courtesy, if, before I deal with the question of costs, you would be good enough to indicate to what extent, if any, you consider that I have unwillingly overstated the case of the small man. Of course, I am assuming that, where lineals are concerned, s. 58 of the Finance (1909-10) Act, 1910 (relating to estates of £15,000 and over), does not apply.

Temple, E.C.4, 15th December. LEONARD JESSOPP FULTON.

English Litigants in the Court of Session in Scotland.

Sir,—I would like to draw the attention of my fellow countrymen in England who require to raise legal proceedings in the Court of Session in Scotland, which sits in Edinburgh and which is equivalent to our High Court of Justice in England, to a matter which would not only make for expedition, but also save such litigants considerable costs.

At present, a number of English solicitors, acting for clients who have to sue actions in the Court of Session, instruct provincial—Glasgow, etc.—solicitors in Scotland to institute such proceedings in that court, and the latter have, in turn, to instruct solicitors in Edinburgh to act in the matter, as it is only the last-mentioned solicitors who can practise in that court, just in the same way as it is only solicitors in London who can practise in our High Court of Justice. This course entails loss of time, as all communications from the English solicitors have to pass to the Edinburgh solicitors through the Scotch provincial ones, and *vice versa*. It further causes English litigants extra costs for, in addition to the bill of costs incurred by them to their English solicitors, they have to pay two bills of costs to the Scots solicitors, viz., one to the provincial solicitors and the other to the Edinburgh ones.

If, therefore, English solicitors instructed Edinburgh solicitors direct, time and costs would be saved to their clients. I mention this matter for the benefit of my fellow countrymen who may have to litigate in the Court of Session in Scotland, as the making for expedition and the saving of costs are essential to litigants in general and to commercial and mercantile ones in particular.

December, 1926. ENGLISH.

LAW OF PROPERTY ACTS.

POINTS IN PRACTICE.

Questions from Annual Subscribers are invited and will be answered by an eminent Conveyancer. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4. The name and address of the Subscriber must accompany all communications, which should be typewritten (or written) on one side of the paper only and be in triplicate. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post.

MAINTENANCE—INFANT—PRE-1926 WILL TRUST.

587. *Q.* The L.P.A., 1925, 7th Sched., repealed the whole of the Conveyancing Act, 1881, except, *inter alia*, ss. 42 and 43 so far as those sections relate to instruments coming into operation before the commencement of the L.P.A., 1925. The T.A., 1925, 2nd Sched., repealed s-ss. (4) and (5) of s. 42 of the Conveyancing Act, 1881. The S.L.A., 1925, 5th Sched., repealed s-ss. (1), (2), (3) and (7) of s. 42 of the Conveyancing Act, 1881. Under s. 31 of the T.A., 1925, income can be applied for the maintenance of an infant beneficiary, but this section does not apply where the instrument under which the interest of the infant arises came into operation before the commencement of the T.A., 1925. Section 102 of the S.L.A., 1925, gives trustees certain powers of management during the infancy of a beneficiary, but this section does not contain any provision corresponding to the provision for maintenance of the infant beneficiary contained in s. 42 (4) of the Conveyancing Act, 1881. The question that arises is: have trustees for the purposes of s. 42 of the Conveyancing Act, 1881, appointed by a will which came into operation before the 1st January, 1926, and who before that date entered into possession of land settled by the will, and which was at the time of such entry into possession vested in an infant tenant in tail, any statutory power to apply surplus income arising after the 1st January, 1926, for the maintenance, education or benefit of such infant tenant in tail? As stated above, s. 102 of the S.L.A., 1925, does not contain any provision for maintenance corresponding to that contained in s. 42 (4) of the Conveyancing Act, 1881, so that the only statutory power of maintenance which can be applicable in the case of any instrument coming into operation before 1st January, 1926, is that contained in s. 43 of the Conveyancing Act, 1881, and the point is whether or not such power applies in the circumstances mentioned in the preceding paragraph?

A. By s. 1 (1) (ii) of the S.L.A., 1925, the land which was vested in the infant tenant in tail on 31st December, 1925, is settled land within the Act, and by virtue of the 2nd Sched., para. 3 (1), it vested in the trustees of the settlement (if any). These trustees are the trustees for the purposes of the Act, see s. 117 (1) (xxiv), and are to be found from s. 30 (1), or, failing s-s. (1), s-s. (3). The property thus being held by trustees upon trust for the infant for life or a greater interest, s. 43 of the Conveyancing Act, 1881, is applicable. It is to be noted that if the trustees appointed by the will for the purposes of the repealed s. 42 of the Conveyancing Act, 1881, are not in fact identical with the S.L.A., 1925, trustees, the power of maintenance, etc., has shifted to the latter.

MORTGAGEE TENANTS IN COMMON.

588. *Q.* I should like, with deference to any contrary view expressed in answers to *Q.* 154, 327, 350 and 509 (Points in Practice) to offer the following suggestions on the above question.

1. As the definition of land in the L.P.A., 1925, s. 205 (1) (ix), does not, unless the context otherwise requires, include an undivided share of land, Pts. VII and VIII of the 1st Sched. to that Act have no application to land held by mortgagees as tenants in common.

2. Having regard to L.P.A., 1925, s. 1 (6), a legal estate is not capable of subsisting in an undivided share in land.

3. Under the L.P.A., 1925, 1st Sched., Pt. I, the undivided share vested in a mortgagee is converted into an interest in the proceeds of sale of the land.

4. In any of the following cases, namely:—

(*a*) Where each tenant in common has mortgaged his undivided shares separately.

(*b*) Where a sole owner has mortgaged one undivided share to one person for one debt and another share to another person for a separate debt (see form of mortgage "Bythewood's Conveyancing, 2nd Ed., Vol. V, p. 388).

(*c*) Where a mortgage of the entirety has become vested by transfer in tenants in common (this being a case which seems to occur in practice) the entirety of the land, not the mortgagee's estate only, but the fee simple or term vested in the mortgagor, is held in undivided shares within the meaning of Pt. IV of the 1st Sched. to the L.P.A., 1925, and in each case vests in the Public Trustee under para 1 (4); it is submitted that this is the case although the mortgagor is one person, it being sufficient that the estate of the mortgagee is an undivided share.

5. In connexion with case (*c*) it should be observed that where the mortgage is originally of the entirety, the mortgagee's remedies by sale, foreclosure, etc., are indivisible and the mortgage cannot be converted by the mortgagee into a mortgage of undivided shares, but it is considered that for the present purpose the case falls within the same reasoning as the other cases.

6. The persons interested in more than an undivided half of the land or the income thereof, who by appointment may displace the Public Trustee, means the mortgagor or mortgagors.

7. The statutory trust for sale is not subject to the rights of redemption of the mortgagor; the mortgagor has no right of redemption as regards the land, but has right of redemption as regards the share of a mortgagee of the proceeds of sale correlative to the mortgagee's rights in that share under the L.P.A., 1925, s. 102; the mortgagor will be entitled to the benefit of s. 26 (3) (as amended) of the L.P.A., 1925.

8. The mortgagees will have the protection of para. 1 (9) of Pt. IV of the 1st Sched. to the same Act.

A. This correspondent's criticisms must always be taken with respect; it is suggested nevertheless that he somewhat confuses the issues by grouping the case of mortgagees of undivided shares of land with that of mortgagees in undivided shares of the entirety of land. The former case is clearly covered by Pt. IV of the 1st Sched. to the L.P.A., 1925, and such incumbrancers may be divested by the Act: see para. 1 (9). The latter case is the subject-matter of the questions he quotes, and is not dealt with specifically in the Act. As to his suggestions severally—

1. This conclusion is not necessarily agreed in the case of mortgagee tenants in common. The "land," subject to the mortgage in such case, is the entirety, and but for s. 1 (6) would vest in the mortgagees for the terms mentioned as tenants in common. But if Pt. IV as well as Pt. VII can apply to the estate of the mortgagees, a matter discussed in the answer to the questions quoted above, the mortgagee tenants in common merely become joint tenants under para. 1 (2) unless the number is above four.

2.

3. This is not agreed, for, on the above reasoning, the estates of the mortgagees are "capable of taking effect as

legal estates" by virtue of Pt. IV of the 1st Sched., which is incorporated into Pt. I of the Act by s. 39.

4. (*a*) and (*b*) are cases of mortgagees of undivided shares, and it is agreed that Pt. IV, para. 1 (4) is applicable if they hold the legal estate, unless, possibly, they are mortgagees of one tenant for life where the whole is settled, which appears to be a para. 1 (3) case.

(*c*) This conclusion is not agreed, for land includes land of any tenure (s. 205 (1) (ix)), and the tenure by mortgage may possibly be dealt with apart from the tenure of the equity, just as freehold and leasehold tenures may subsist together in the same parcels. And if the mortgage tenure alone is considered, Pt. IV, para. 1 (2), may be applicable. Indeed, mortgagees of entireties are given a separate tenure by the Act, certainly in all other cases where they are not mere chargees.

5. It might be that a mortgagee tenant in common of an entirety could exercise his remedies against one mortgagor tenant in common only, but presumably he would not renounce his rights against the others.

6. See answer to 4. It is submitted that the mortgagors have no interest in the mortgage term as such.

7. A court would certainly resist the conclusion that, because the mortgage happened to be divided up between tenants in common, under a will or otherwise, the mortgagor's equity to redeem the land had vanished. Section 102 deals with the different case of a mortgage of an undivided share. And it is submitted with respect that s. 26 (3) has not given mortgagors the right in a particular case either to dictate to mortgagees whether they shall exercise their power of sale or otherwise to have a word in the matter: See *per* Jessel, M.R., in *re Alison Johnson* v. *Mounsey*, 1879, 11 C.D. 284, at p. 297, as to a mortgagee's trust for sale, quoting V-C. Wood in a passage already approved by James, L.J.: "I see no difference between the case of an ordinary mortgage and that of a trust for sale. It is not such a trust as would enable the mortgagor to file a bill to have the property sold, because the discretion as to selling or not is in the mortgagees alone."

8. As above. It is submitted that mortgagees of the entirety are in a more favourable position than mortgagees of undivided shares.

INTESTACY—CLASS—COUSINS—SUBSTITUTION.

589. *Q.* T. W. died this year intestate, leaving a cousin of the whole blood, and children of another cousin of the whole blood as his next of kin. Are the children of the deceased cousin entitled to participate in the distribution of the estate?

A. It is assumed that "cousins" means first cousins in each case, for second cousins do not take under ss. 45–47 of the A.E.A., 1925. The statutory trusts under s. 46 (1) (v) "Fourthly" are in fact in favour of uncles and aunts, but if all are dead, their children, first cousins, take *per stirpes* under s. 47 (3) by reference to s. 47 (1) (i). The latter subsection provides for the substitution of the children of a deceased grandchild, and the "corresponding" trust read into the provisions of s. 46 in favour of uncles or aunts by virtue of s. 47 (3) will substitute first cousin once removed, children of deceased first cousins, for their parents.

UNDIVIDED SHARES—TENANTS FOR LIFE—TITLE.

590. *Q.* A testator, in a will drawn by himself, directed that his debts should be paid, and he then bequeathed to "my wife one quarter of the income and three-quarters of the income to my daughter from the following properties after all expenses for upkeep, etc., are paid." The properties referred to comprised real and personal estate. The testator then went on to provide that "on the death of my wife her share to go to my daughter. At my daughter's death the property, etc., to be divided among her children as she thinks fit." He then disposed of his "cash," bank accounts and household furniture; and omitted to appoint an executor or trustees. Letters of administration with the will annexed were taken out in 1915 (following his death in that year) by the said daughter, who is, with the testator's widow, still living. The daughter is still the sole trustee. Apparently the will constitutes a settlement, and the question arises as to who is the tenant for life pending the death of the widow. The present trustee wishes to sell the real estate herself, but apparently she cannot do this, as she can hardly be deemed to be still acting as personal representative of the testator nearly thirteen years after his death.

We shall be obliged by your opinion as to the following points:—

(1) Is the real estate to be deemed to be settled on the daughter (and, during the widow's life, on the widow as to one-quarter of the estate) for life; and then as she (the daughter) shall appoint by will or deed among her children?

(2) If the daughter omits to appoint by will or deed, will there be an intestacy under the original testator's will?

(3) Can the daughter at present make a title alone to the real estate?

(4) If so, in what capacity?

(5) If not, and the will constitutes a settlement, in whom should a vesting deed vest the real estate?

(6) When a new trustee has been appointed to receive, with the daughter, the purchase money, and they have vested the real estate in, e.g., the widow and daughter jointly, it is assumed that the widow and daughter can then make a title to the real estate?

(7) The like, that on the death of the widow, the daughter will be able as sole tenant for life, to make a title to a purchaser?

A. (1) A will cannot be reliably construed without sight of it as a whole, but on the materials furnished the construction given appears to be the correct one.

(2) The general rule is that when an express gift in default of appointment to a class is missing, and there is no gift over, there is an implied gift to the class equally, see "Farwell on Powers," 3rd ed., p. 258, approved in *re Hughes*, 1921, 2 Ch. 208, at p. 214, and see also *re Llewellyn's Settlement*, *ib.*, 281. Unless something in the will excludes the rule, therefore, there will be no intestacy if any child survives.

(3) and (4) She can make title as administratrix notwithstanding the lapse of time, see A.E.A., 1925, s. 36 (6), (8) and (12), and *Re Venn and Furse's Contract*, 1894, 2 Ch. 101, a decision applicable to realty since 1897. If, however, as is presumably the case, the estate has been cleared long ago, this is not the right procedure.

(5) This was a case of settled property with tenants for life enjoying it in undivided shares on 31st December, 1925, and therefore, apart from the L.P. (Am.) A., 1926, it passed on 1st January, 1926, under the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (3), on the statutory trusts to the daughter as trustee of the settlement under the S.L.A., 1925, s. 30 (3), see L.P.A., 1925, s, 205 (1) (xxvi). By the L.P. (Am.) A., 1926, Sched., a new para. 4 was added to the 1st Sched., Pt. IV, of the L.P.A., 1925, providing that, if the entirety of the land devolved together (not in undivided shares) the tenants for life should take a joint legal estate. Possibly in the event it may do so, and possibly it may not, but the opinion here given is that the new para. 4 does not apply. If this is right, para. 1 (3) applies, and the daughter therefore holds upon the statutory trusts, but she will have to appoint a new trustee to give receipt if she wishes to sell. There will be no vesting deed, but, on the appointment of a new trustee there will be an express or implied vesting declaration under s. 40 (1) of the T.A., 1925.

(6) On the above reasoning the assumption in this question is wrong, and, the land being subject to a trust for sale, is not settled land. See S.L.A., 1925, s. 1 (7), added by the L.P. (Am.) A., 1926.

(7) No, the legal estate will continue in the trustee or trustees for sale as such, though possibly, if the daughter made an irrevocable appointment, all the persons interested in the land might re-settle it under the L.P.A., 1925, s. 23.

LANDLORD AND TENANT—AGRICULTURAL HOLDING—COMPENSATION FOR DISTURBANCE—AGRICULTURAL HOLDINGS ACT, 1923, ss. 12, 57.

591. *Q.* On the 1st January, 1925, A was the tenant of 40 acres and 2 roods of grass and arable land, together with house and garden, let at a total rental of £100 per annum. In March, 1925, this property, together with other property, was split up into different lots and A's rent apportioned, in respect of each separate lot, by the auctioneer, and was put up for sale by public auction on the 30th of that month. At the auction sale—(A) B became the purchaser of 3½ acres, which was advertised as occupied by A at an apportioned rent of £9 per annum; (B) C became the purchaser of 32 acres, which was advertised in the particulars of sale, as occupied by A, at an apportioned rent of £66 per annum; (C) Three acres and the house and garden, advertised in the particulars of sale as occupied by A at an apportioned rent of £19 was purchased by A, the tenant; and (D) the remaining two acres, advertised in the particulars of sale as occupied by A at an apportioned rent of £6 per annum, was purchased by D. The completion of the respective purchases being fixed for 12th May, 1925. On the 9th May, 1925, the tenant A was served, on behalf of the landlord, with a notice to quit the whole of the property occupied by him, on 12th May, 1926, which notice contained a statement to the effect that it was given for the reason that A's landlord had been requested by the purchasers of the said property, to serve him (A) with the notice. On the 20th May, 1925, on behalf of A, the tenant, notice of intention to claim compensation for disturbance, pursuant to the A.H.A., 1925, was served upon the respective purchasers, or their agents, and on the 8th July, 1926, particulars of A's claim for compensation for disturbance, being one year's rent at the apportioned rentals shown in the particulars of sale, together with claims for unexhausted improvements, &c., were served upon the respective purchasers, or their agents. In two cases the respective solicitors acting on behalf of different purchasers, refuse to admit A's claim for compensation for disturbance, giving the reason that A has retained part of the property (3 acres and house and garden at an apportioned rent of £19 per annum, above referred to). A on or about the 12th May, 1926, held a sale in respect of the holding comprising the 32 acres purchased by C; in the other two cases no sale being necessary since the respective holdings comprise grass land only.

Please advise as to whether A, under the circumstances, is entitled to his respective claims for compensation for disturbance in respect of those portions quitted by him on 12th May last, and generally with regard to his claims, and refer to any authorities, or otherwise?

A. The notice to quit, served after the contract for sale, does not appear to be invalidated by s. 26 of the Agricultural Holdings Act, 1923, and, if the tenant quitted the whole under it, he would be entitled to the compensation given by s. 12, unless he had brought himself within one of the exceptions therein. This is not suggested, but the refusal to admit A's right is probably based on the contention that he has not "quitted his holding" within s. 12 (1), because he retains possession of the part he has purchased. "Holding," however, is defined by s. 57 (1), as "any parcel of land," and so not necessarily the whole subject-matter of a tenancy, though it is arguable from the wording of s. 12 (8) and s. 27 (1) (*b*), that holding has the latter meaning. On the whole, however, the opinion here given is that "any parcel of land held by a tenant" includes a parcel held with others under the same tenancy, and, on this view, compensation is payable. The recent case of *Westlake* v. *Page*, 1926, 1 K.B. 298, on s. 12 (1), (6) and (8), appears just to miss the point. *Bankes, L.J.*, however, appears to contemplate that there may be two or more holdings under one contract (see p. 308) and this strengthens the above opinion.

City of London Solicitors' Company

LAW OF PROPERTY ACTS LECTURE

BY MR. F. C. WATMOUGH (BARRISTER-AT-LAW),
ON WEDNESDAY, 8TH DECEMBER, 1926.

(*Verbatim Report.*)

(*Continued from Vol. 70, p. 1239*).

Another question is as follows: A man dies leaving leasehold property to his wife for life. A vesting assent is necessary in favour of the wife. Who is entitled to the deeds? The wife is entitled to the deeds; the term is vested in her. In that case you would endorse a note of the assent in her favour on the probate.

Another question is, whether in cases where a contract had been entered into years ago for the sale of property, and the purchase money had been paid but no conveyance executed—which sometimes happens in the case of companies—the automatic vesting provisions vested that property in the purchaser. The answer is No. There is an express provision—I think it is para. 7 (*j*) of the second part of the 1st Sched.—which expressly provides that in such cases there is to be no automatic vesting; such a provision, no doubt, being inserted at the instance of the Inland Revenue authorities, as otherwise stamp duty on the conveyance would have been avoided. In such cases it does not matter whether or not the purchase money has been paid; there is no automatic vesting.

Those are, I think, the only questions which have been put to me. In this necessarily very brief sketch of a very large subject I have endeavoured to keep to-night as far as possible to practical questions—at all events to questions which have in fact arisen in practice. It has been difficult to select points which might be considered to be of practical use or interest to you, and so I have had to limit myself to a comparatively small number, but I hope that at any rate to some of you they may be points of some assistance.

I had intended to run through a few of the decisions which have been given under the Act. There are very few of them as a matter of fact. In the five minutes I have to spare I will just mention one or two of them.

The first one is the case of *Brooker* v. *Brooker*, reported in "Weekly Notes," p. 93, of this year. That case decides that the result of the Law of Property Act, s. 28, is to destroy the effect of the well-known rule in *Howe* v. *Lord Dartmouth*, in the case of leaseholds settled by a will. In other words, that the life tenant is entitled to the income without capitalising part of it. The rule never did apply to settlements made by deed. I see no reason why its abolition as regards wills should be regretted.

I may say that is almost the only direct decision on construction of the Law of Property Act. The other decisions are almost all on the Settled Land Act. There is the case of Lord Carnarvon's estate, which decided a question which caused some people some doubt, namely, whether a corporation fell within the description of "a person of full age," and could therefore be within the category of a tenant for life. That is also reported in the "Weekly Notes," p. 242. There are other points with regard to settled land decided by that case, which will appear in the "Law Reports" in due course.

There is in the case of *Fielden* v. *Byrne*, a decision arising under s. 84 of the Law of Property Act, with reference to applications to modify restrictive covenants. It was held in that case that in an action to restrain breach of such a covenant a stay of proceedings will be granted pending the application to the authority mentioned in s. 84. That is reported in the Chancery Reports.

There is a useful decision in *Re Egerton's Estates*, which is also reported in the Chancery Reports, with regard to the power of a life tenant to create a legal mortgage subject to prior equitable interests.

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N.B.—Vol. 71 commenced with this issue.

As I have said, however, these are cases involving questions of settled land, and some of them are rather abstruse questions with which we are not as a rule called upon to deal. You will find three further decisions with regard to settled land in the November Law Reports.

Apart from decisions under the Settled Land Act, you will find very few material decisions. There is a useful case as to a grant of administration where the estate is insolvent. If an infant is a beneficiary you have to have two administrators, but in such a case where the estate is insolvent a grant may be made to one. That is the case of in *Re Herbert*, in the Probate Reports.

There are two decisions as to vesting deeds. One is in *Re Clayton's Estate*, which decides that you can have two vesting deeds if you like, one as to part of the property, and one as to another part. That is in Chancery Reports, 279.

Then there is the case of *In re Ogle's Estate*, which decides that where various properties subject to a settlement had been sold subject to a jointure, there were, in effect, a number of settlements created, and the settlement of each piece of land constituted for the purpose of the Act a separate settlement.

I have not been able to state these cases in detail, but they are all collected at the beginning of the third volume of "Prideaux." If you want to look at the cases you will find there a very convenient summary of every decision given up to about three weeks ago. (Applause.)

The CHAIRMAN: Ladies and gentlemen, It is all very well for Mr. Watmough and other gentlemen of the Bar who can devote their whole lives to the study of this legislation to tell us there is nothing difficult about it and it is easy to understand it. We solicitors do not find it so. It is therefore very beneficial to us that a gentleman like Mr. Watmough should come to us and endeavour to inculcate into our minds some slight understanding and some little glimmer of the meaning of all this legislation. I am sure you would like me on your behalf to tender our hearty thanks to the lecturer for the trouble he has taken in instructing us. (Applause.)

Mr. WATMOUGH: Mr. Chairman and Gentlemen, I thank you all for the attention you have given me. It has been a great pleasure to me to deliver these extempore addresses to you, short and very imperfect as they are.

(Transcript of the Shorthand Notes of THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED, *104-7, Fetter Lane, E.C.4.*

House of Lords.

Martin *v.* Lowry.
Martin *v.* Inland Revenue Commissioners.

7th December.

INCOME TAX—EXCESS PROFITS DUTY—SINGLE SPECULATION—BIG PURCHASE OF LINEN—SALE WITHIN A YEAR—"TRADE OR BUSINESS"—"ANNUAL PROFITS OR GAINS"—INCOME TAX ACT, 1918, Sched. D.

The appellant, an engineer, contracted to buy a surplus stock of Government linen. He set up a large selling organisation and within seven months had sold the whole at a large profit. Having been assessed to income tax and excess profits duty, he contended that he was not carrying on a "trade or business" in linen and that the profit made by him was not an "annual profit or gain."

Held, that the assessment was rightly made.

These were two appeals from a decision of the Court of Appeal (1926, 1 K.B. 550) affirming a decision of Rowlatt, J. The appellant was assessed to excess profits duty and income tax for the year ending 5th April, 1920, in the sum of £1,900,000. He was an agricultural engineer by profession, but no question arose as to any profits made by him as such. The assessment was made entirely on the profits of an enormous speculation in linen in 1919. In June, 1919, the appellant entered into a contract with the Controller of the Aircraft Disposal Department to purchase a huge stock of aeroplane linen. After several abortive attempts to dispose of it in bulk, he took an office in Holborn, employed a large staff of clerks and engaged an advertising manager and a linen expert, with the result that the entire stock was taken up, paid for and sold by February, 1920. The appellant kept a separate banking account to deal with the linen and he continued to devote most of his time to his business of an engineer. The appellant contended that this was a single speculation or gamble, that he did not carry on any trade in linen, and that the profit was not an annual profit. Rowlatt, J., held that the transaction amounted to the carrying on of a trade and that the profit was an annual profit. The Court of Appeal affirmed his decision.

The LORD CHANCELLOR, in the course of his judgment, said the appellant raised two points. First, he said he did not carry on a trade because his activities in question did not amount to more than a single venture. The Commissioners found as a fact that he did carry on a trade, and on the facts there was ample evidence to support that conclusion. Indeed, having regard to the methods adopted and to the time occupied by the operations he did not see how they could have come to any other conclusion. That disposed of the appeal as to excess profits duty. Then it was said that the profits were not annual profits within the meaning of Sched. D, because they were not recurrent or capable of recurrence. No doubt there were passages in the Act where the word "annual" had an implication of recurrence, but he did not think that the word had any such implication in the present context. In that context it bore the construction put upon it by Rowlatt, J., and meant simply profits or gains in the year of assessment. The appeals would therefore be dismissed.

The other noble and learned lords concurred.

COUNSEL: *Latter*, K.C., and *R. W. Needham*; *the Attorney-General* (*Sir Douglas Hogg*, K.C.) and *R. P. Hills*.

SOLICITORS: *Charles Wright*; *Solicitor of Inland Revenue*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

No. 1.

In re Mathieson. 1st December.

BANKRUPTCY—SETTLEMENT—GENERAL POWER—EXERCISE OF—APPOINTOR'S SUBSEQUENT BANKRUPTCY—APPOINTMENT VALID AGAINST TRUSTEE—DISTINCTION BETWEEN POWER AND PROPERTY—BANKRUPTCY ACT, 1914, 4 & 5 Geo. 5, c. 59, ss. 38, 42, s-ss. (1) and (4), 167.

The exercise of a general power of appointment under a marriage settlement by the donee in favour of his wife is not a "settlement of property" within s. 42 of the Bankruptcy Act, 1914, and the property appointed is not "property" belonging to the donee, and therefore if the donee becomes bankrupt, either within two years or ten years of the date of the appointment, it is valid as against his trustee in bankruptcy.

Ex parte Gilchrist, 1886, 17 Q.B.D. 521, *applied*.

Decision of Astbury, J. (*ante*, p. 1161), *reversed*.

Appeal from a decision of Astbury, J., in bankruptcy. By a post-nuptial settlement made in pursuance of ante-nuptial articles, the husband settled certain property upon trusts for payment of the income first to the wife and then to the husband for life, and subject thereto upon trust for the children of the marriage, and in default of children upon such trusts as to a moiety of the funds as the husband should by deed or will appoint, with trusts over in default of appointment. There were no children of the marriage, and in January, 1925, the husband exercised the general power of appointment by appointing that in default of children the fund should be

held subject to his own life interest in trust for his wife absolutely. In May, 1925, the husband committed an act of bankruptcy, and in August was adjudicated bankrupt. On the motion of the trustee, Astbury, J., held that the appointment was void as against the trustee as being a "settlement of property" within s. 42 of the Bankruptcy Act, 1914. The wife appealed. *Cur. adv. vult.*

The Court allowed the appeal.

Lord HANWORTH, M.R., having stated the facts, and read the material portions of ss. 38 and 42 of the Bankruptcy Act, 1914, proceeded: The express enactment of s. 38 was necessary to bring the capacity to exercise a power within the meaning of the bankrupt's property, which, without it, would not be comprised in his property divisible among his creditors. It was admitted that the appointment was a conveyance or transfer, but it was claimed that it was not a conveyance of property. The history of s. 42 was to be found in *Re Player*, 15 Q.B.D. 682. It was difficult to apply the latter part of s. 42, s-s. (1), to the exercise of a power as in the present case. The parties claiming under a settlement sought to be avoided must prove that the settlor could pay all his debts without the aid of the property settled, and that the interest of the settlor in such property passed to his trustee. Here the property over which the power was exercised was not available to the settlor for the purpose of paying his debts at the time of its execution. The power of appointment in the present case did not accord with the attributes of a settlement within s. 42: *Shrager* v. *March*, 1908, A.C., at p. 406. In *Re Armstrong, ex parte Gilchrist*, 17 Q.B.D. 521, the court held that where property was settled upon trust for a married woman for life with a general power of appointment, the property in respect of which she was subjected to the bankruptcy laws, as carrying on a trade separately from her husband, did not include such a general power of appointment. Lord Esher said that it had always been held that an unexercised power was not the "property" of the donee of the power, and Fry, J., said that a power might, when exercised, result in property being vested in the donee, but it was no more his property than his power to write a book or to sing a song. He (his lordship) agreed with Cave, J., that the section was one intended to deal with settlements in the ordinary meaning of that term. There was a great difference between avoiding a settlement already made, and rendering available to the bankrupt's estate sources to which he might have had recourse for his own benefit, and from which his estate might be supplemented. Astbury, J., had placed too wide an interpretation on the section, and the appeal must be allowed with costs, and the usual order as to the trustee's costs.

ATKIN, L.J., and SARGANT, L.J., delivered judgment to the same effect, the latter observing that "property" within s. 42 (1) must refer to property which, apart from the settlement, would be available to pay the bankrupt's debts.

COUNSEL: *Clayton*, K.C., and *E. W. Hansell*; *Archer*, K.C., and *W. F. Waite*.

SOLICITORS: *Cohen & Cohen*; *R. S. Smallman*.

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

Public Trustee and Others *v.* Chancellor of the Duchy of Lancaster and Another 3rd December.

TITHE—TITHE RENT-CHARGE—"ISSUING OUT OF THE LAND"—SEPARATE HEREDITAMENTS—EFFECT OF GENERAL WORDS IN CONVEYANCE OF LAND—TITHE COMMUTATION ACT, 1836, 6 & 7 Will. IV, c. 71, ss. 12, 67 and 71.

Section 67 of the Tithe Commutation Act, 1836, provides that a certain sum shall be paid having regard to the value realised by certain kinds of produce during the year, and then the amount of that sum is to be payable instead of the said tithes in the nature of "rent-charge issuing out of the land charged therewith," and by s. 71 of the same Act: "Any person having any interest in or claim to any tithes . . . before the passing of this Act shall have the same right to or claim upon the rent-charge for which the same shall be commuted as he had to or upon the tithes, and shall be entitled to have the like remedies for recovering the same as if his right or claim to or upon the rent-charge had accrued after the commutation: Provided that nothing herein contained shall give validity to any mortgage or other incumbrance which, before the passing of this Act, was invalid or could not be enforced; and every estate of life, or other greater estate, in any such rent-charge, shall be taken to be an estate of freehold, and every estate in any such rent-charge shall be subject to the same liabilities and incidents as the like estate in the tithes commuted for such rent-charge."

Held, that the Act of 1836 did not alter the general characteristics of the tithe; it only altered the method of collecting it. The general nature of the tithe rent-charge did not differ in any way from the tithes for which it was substituted. The tithe rent-charge remained as it was before the Act a separate hereditament, not appendant nor appurtenant to any other hereditament, and could not pass by a conveyance of land in general words.

Chapman *v.* Gatcombe, 1836, 2 Bing. N.C. 516, *followed*.

Appeal from the Divisional Court.

The plaintiffs brought an action in the county court to recover arrears of tithes on certain lands at Tutbury. In 1894 the tenant-in-tail of these lands executed a disentailing assurance with the consent of the tenant for life and protector. By a resettlement dated the 12th of March, 1895, the tenant-in-tail conveyed the lands to trustees on trust for himself with remainders over. On the 4th of April, 1900, he assigned his life interest to trustees on trust as to part to himself and on further trusts not material. In 1920, the tenant for life offered the lands in question for sale subject to certain conditions of sale and particulars disclosing a tithe of £3 16s. 6d. and land tax of £4 8s. 9d. as being the only outgoings known to the vendor. On 2nd September, 1920, the lands were conveyed by the tenant for life to the appellants, discharged from all limitations, trusts, powers and provisions. It was subsequently discovered that a rectorial tithe of £36 8s. 3d. was payable out of the lands so conveyed, but that this tithe had not been paid for a number of years. The tenant for life had the right to convey this tithe rent-charge, had he wished to do so. This action was brought by the trustees of the assignment of 4th April, 1900, to recover arrears of this rectorial tithe rent-charge. The county court judge gave judgment for the plaintiffs on the ground that the tithe rent-charge in question had not been conveyed to the appellants by the conveyance of 2nd September, 1920, and his decision was affirmed by the Divisional Court. The Chancellor of the Duchy of Lancaster appealed. The court dismissed the appeal.

BANKES, L.J., in the course of his judgment, said that he agreed with the decision of the county court judge. Up to the time of the Tithe Commutation Act, 1836, the tithe was looked on as a separate hereditament which was not treated as issuing out of the land, and special words were required in the conveyance to convey the tithe. It was said that the Act of 1836 altered the essential characteristics of tithe altogether and that it converted it from a separate hereditament into something issuing from the land like a rent-charge, and that therefore a conveyance of land since that Act operated to convey the title. That contention could not be accepted, because the whole object of the Act of 1836 was to maintain the essential characteristics of the tithe. There was no ground for the suggestion that merely because the Act of 1836 (in s. 67) used the words "issuing out of the land" it was to be assumed that the whole essential characteristics of tithe had been changed. The case of *Chapman* v. *Gatcombe*, 2 Bing. N.C. 516 (which was decided before the passing of the Act of 1836, and in which it was held that a conveyance of land in general words would not have the effect of passing tithes arising out of the land, to the purchaser), was still good law. The tithe rent-charge would not have been within such

general words as those used, before the Act of 1836, nor was it within such general words since that Act. The tithe rent-charge was not anything which the conveying party had in, to or on the property conveyed. The tithe did not belong, or appertain to, the premises, and it was not something which a party had in, to or on the property conveyed. The appeal must be dismissed with costs.

SCRUTTON, L.J., and SARGANT, L.J., delivered judgments dismissing the appeal.

COUNSEL: *Sir Herbert Cunliffe*, K.C., and *E. J. L. Whitaker*; *Gavin Simonds*, K.C., and *T. N. Winning*.

SOLICITORS: *The Solicitor to the Duchy of Lancaster*; *Kirkby, Millett & Ayscough*.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Joe Lee, Limited *v.* Lord Dalmeny.
Same *v.* Tattersall's Committee

Eve, J. 17th November.

GAMING—RACING BETS—DISPUTES BETWEEN BOOKMAKERS AND CUSTOMERS—ACTION TO RESTRAIN ADJUDICATION BY COMMITTEE.

The court will not restrain Tattersall's Committee from adjudicating on disputes in betting transactions, even when the parties to such transaction do not consent to such adjudication.

These two actions, which were tried together, were brought by the plaintiffs, turf commission agents, against the defendants for an injunction to restrain them from investigating or adjudicating upon any bet in dispute between them and their clients without their consent. In addition to the above defendants, there were two other defendants who had not put in defences, and they were two persons with whom bets were said to have been made. The object of the plaintiffs' claim was to obtain a decision on the question whether Tattersall's Committee were entitled to arrogate to themselves the right to give a decision on any dispute between bookmaker and backer which might be brought to their notice irrespective of the consent of the parties to the dispute. The result of such a decision, if adverse to the bookmaker, might be very serious and end in his being warned off the turf. The plaintiffs contended that they ought not to be compelled to submit to the Committee's decision, because there was here an express agreement to refer disputes to a particular arbitrator. They contended that the contract was collateral and enforceable, and that the Committee should be restrained from adjudicating because such acts would amount to a wrongful inducing of another to break his contract, and because they threatened to intimidate the plaintiffs into a course which they were not bound to adopt. The Committee denied that they were seeking to procure a breach of contract, and argued that the contract was unenforceable under the Gaming Acts.

EVE, J., said the first question which arose was whether the agreement to refer disputes to a particular arbitrator was a valid and legal agreement. In his opinion it was not. He thought that the point raised by Mr. Lawrence that the contract was a contract by way of gaming or wagering and therefore unenforceable was a short answer to the action. But even if there were a valid contract, there would be no ground for an injunction. It was said that there was a sort of combination or conspiracy to inflict damage on the plaintiffs unless they were prepared to submit to the arbitration of the Committee. He could not take that view. The Committee were the recognised tribunal in these matters, and it was for the plaintiffs, if the customers chose to appeal to it, to elect whether they would submit to its arbitration. It was impossible on the facts to hold that there was any attempt on the part of the Committee or by the two customers to coerce the plaintiffs into a line of conduct of which they did not approve. The action failed and must be dismissed, with costs.

COUNSEL: *Gover*, K.C., and *Herbert Jacobs*; *The Hon. Geoffrey Lawrence*, K.C., and *Wilfrid Hunt*.

SOLICITORS: *Geare & Son* for *Ross & Son*, Horley; *Gibson and Weldon* for *Rustons & Lloyd*, Newmarket.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Faulkner *v.* Hythe Corporation.

Lord Hewart, C.J., Avory and Salter, JJ. 29th October.

PRIVATE STREET WORKS—OBJECTION RAISED—APPLICATION TO COURT OF SUMMARY JURISDICTION BY LOCAL AUTHORITY—TO BE MADE BEFORE WORK IS BEGUN—PRIVATE STREET WORKS ACT, 1892 (55 & 56 Vict., c. 57), ss. 7, 8.

An application by a local authority under s. 8 of the Private Street Works Act, 1892, to hear and determine an objection to proposed works made under s. 7 of that Act must be made to the court of summary jurisdiction before the commencement of the works. The justices have no jurisdiction to hear an objection under s. 7 after the works are completed.

Case stated by the justices for the Borough of Hythe. The appellant gave notice of objection to the respondents under s. 7 of the Private Street Works Act, 1892, in respect of the respondents' proposals relating to property situated in Albert Road, Hythe. The respondents, the local authority, in pursuance of s. 8 of the above Act, made an application to the justices regarding the objection which was heard on 13th July, 1926, when the court of summary jurisdiction, having heard an objection to their jurisdiction made by counsel for the appellant, decided that they had power to hear the case within the meaning of s. 8 of the Private Street Works Act, 1892. At the hearing the following facts were agreed: The respondents as the urban authority should sewer, level, pave, metal, flag, channel and make good and provide proper means for lighting Albert Road, and that in pursuance of s. 6 of the Private Street Works Act, 1892, the expenses should be apportioned on the premises fronting, adjoining or abutting on the street. The respondents' surveyor prepared specifications, estimate and provisional apportionment, and the resolutions approving these were published in the manner specified in Pt. 2 of the Schedule to the Private Street Works Act, 1892, and copies were served on the owners of the premises, including the appellant, within seven days of the first publication, namely, the 29th December, 1923. The appellant was served with an amended apportionment on the 21st January, 1924, and two days later he served on the respondents a notice in writing objecting to their proposals on the ground that Albert Road was a highway repairable by the inhabitants at large (s. 7 (*b*) Private Street Works Act, 1892). The respondents made no application under s. 8 of the Act to the justices to appoint a time for determining the matter of objections until after the work was completed and final apportionment made and notice served. The appellant received notice of this final apportionment on 1st September, 1925, and again two days later served notice in writing of a similar objection to that which he had previously made. The respondents applied to the court of summary jurisdiction on the 2nd July, 1926, to appoint a time for hearing the objection; this was fixed for the 13th July, 1926. For the appellant it was submitted at the hearing that the justices had no jurisdiction to hear the objection; that the words "before the commencement of the works" should be read as if inserted in s. 8 of the Private Street Works Act, 1892, after the words "at any time after the expiration of the said month." For the respondents it was contended that the justices were not at liberty to insert words into a statute which did not appear therein. On behalf of the appellant the following cases were referred to: *Wirral Rural District Council* v. *Carter*, [1903] (47 SOL. J. 223; [1903] 1 K.B. 646); *Hayles* v.

Sandown Urban District Council, [1903] 1 K.B. 169; and *Pearce* v. *Maidenhead Corporation*, [1907] 2 K.B. 96. The question on which the opinion of the court was required was whether the justices came to a correct decision in point of law in holding that they had jurisdiction, and if not, what should be done in the premises.

Lord HEWART, C.J.: The point involved in this case may be very concisely stated. It is whether in s. 8 of the Private Street Works Act, 1892, a true construction of the words relating to the application by the urban authority at any time after the expiration of the month therein referred to involves the meaning that the application is to be made while the works are still proposed works and before they have been started upon. His lordship mentioned the cases referred to, and was of opinion that the true construction was that the application should be made before the proposed works were commenced. He referred to the relevant sections of the Act, and continued: I do not see that the words "before the commencement of the works" are omitted from s. 8. In my view the scheme of these sections and the vocabulary employed shows that the application is to be made before the commencement of the works, otherwise it would be grotesque to speak of objections to proposed works. The appeal succeeded, and the order made by the justices was null and void.

AVORY, J., and SALTER, J., delivered judgment to the same effect.

COUNSEL: For the appellant, *C. R. Havers*; for the respondents, *W. M. Andrew* and *A. F. Clements*.

SOLICITORS: *E. C. Rawlings, Butt & Bowyer; John Hands and Son*, for *H. Stainer*, Hythe.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Daphne *v.* Shaw (Inspector of Taxes).

Rowlatt, J. 9th November.

REVENUE—INCOME TAX—LAW LIBRARY—DEDUCTION FOR WEAR AND TEAR OF BOOKS—OBSOLESCENCE DUE TO RECENT LEGISLATION.

Section 16 of the Finance Act, 1925 (15 & 16 Geo. 5, c. 36), enacts: "Rules 6 and 7 of Cases I and II of Schedule D (which provide in connexion with the charge to Income Tax under that schedule of the profits or gains of a trade, for the allowance of deductions in respect of the wear and tear of machinery and plant and in respect of expenses incurred in replacing obsolete machinery or plant) shall apply as if references in those rules to the profits or gains of a trade included references to the profits or gains, whether assessable under Schedule D or otherwise, of a profession, employment, vocation or office."

A claim by a solicitor to deduct from his annual profits, prior to assessment for the purpose of income tax, a sum in respect of the wear and tear of part of his law library during the year, and for obsolescence, due to recent legislation, of certain books forming part of that library, was dismissed on appeal.

Case stated by the Commissioners for the General Purposes of the Income Tax Acts for the Division of Finsbury. The appellant, Frank Daphne, appealed against an assessment of £1,500 made upon him under Sched. D of the Income Tax Acts for the year ending the 5th April, 1926, in respect of the profits of his profession as a solicitor. In support of his appeal the appellant submitted accounts for the three years ending the 31st July, 1924, and by these accounts his profits were shown to average £1,327 per annum. From this sum of £1,327 the appellant claimed to deduct the sum of £8 as an allowance for (*a*) wear and tear during the year of part of his law library, and (*b*) for obsolescence of certain books forming part of the same library. It was contended by the appellant: (1) that under s. 16 of the Finance Act, 1925, which extended to professions, employments, vocations and offices, the allowance granted to traders by the Income Tax Act, 1918 (Sched. D, Cases 1 and 2, rr. 6 and 7), of deductions in respect of the wear and tear of machinery and plant and in respect of expenses incurred in replacing obsolete machinery and plant, he was entitled to prefer a claim for wear and tear during the year of his law library, that being his machinery or plant for the purposes of his profession, and further, that he was entitled to claim for certain legal books which had become obsolete in consequence of new legislation. (2) That £8, the amount claimed by him, was under the circumstances a reasonable sum and should be allowed. The inspector of taxes contended that the appellant was not entitled to the deduction claimed, and referred to the case of *Earl Derby* v. *Aylmer*, 1915, 3 K.B. 374. It was agreed between the parties that in the event of the Commissioners giving their decision in favour of the appellant his profits liable to assessment as disclosed by his accounts should be £1,319, that is, £1,327 less £8 for wear and tear; but if the decision was adverse to the appellant the amount assessable would be £1,327. The Commissioners held (1) that the books contained in the law library of the appellant were neither machinery nor plant and that he was not entitled to relief for either wear and tear or obsolescence in respect thereof; (2) that the assessment made upon the appellant ought to be reduced from £1,500 to £1,327, and they reduced the same accordingly. The appellant now appealed from this decision, and appeared in person. He cited the following passage from the Common Law Article 47A of Coke on Littleton (5): "Beasts belonging to the plow, *averia carucæ*, shall not be destreyned (which is the ancient common law of England), for no man shall be distreined by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the books of a scholler." He then contended that the obvious object of the common law was not to deprive by distress any man of his means of livelihood in the shape of objects necessary for earning his living, and that utensils and instruments of trade or profession, which latter should be specially noted, are construed with reference to the particular vocation to be considered. He referred to the cases of *Gordon* v. *Falkner*, 4 T.R., 565, and *Simpson* v. *Hartopp*, Willes 515, as establishing that utensils and instruments include what is now commonly known as plant and machinery. The appellant cited the following passage from the judgment of Lord Lindley in *Yarmouth* v. *France*, 1888, 32 SOL. J., 487; 1887, 19 Q.B.D. 647, and submitted that the definition therein, if applied to professions, would obviously include books: "There is no definition of plant in the Act; but in its ordinary sense it includes whatever apparatus is used by a business man for carrying on his business; not his stock-in-trade which he buys or makes for sale, but all goods and chattels fixed or moveable, alive or dead, which he keeps for permanent employment in his business." He, the appellant, distinguished *Yarmouth* v. *France* from *Lord Derby* v. *Aylmer*, 1915, 3 K.B. 374, in that the latter had no reference to obsolescence, and the subject-matter was not plant depreciating by wear and tear. He further contended that the relief arising under rr. 6 and 7 of the Income Tax Act, 1918, as regards wear and tear or obsolescence of machinery and plant of traders only, was extended by s. 16 of the Finance Act, 1925, to a "profession, employment, vocation or office," and submitted that his law library was his machinery or plant either on common law principles and the cases decided thereon, or in the definition in *Yarmouth* v. *France* if applied to a profession. He contended that plant must be construed with reference to each particular profession. The Solicitor-General, for the respondent, submitted that plant must be construed in the narrow, ordinary sense, as it is limited by the word "machinery," and that no allowance is intended or allowed for depreciation by reason of the admitted wear and tear or obsolescence of a law library. He referred to the case of *Dumbarton Harbour Board* v. *Cox*, 1919, S.C. 162, as showing that "machinery and plant" must be construed reasonably. The appellant, in reply, agreed that "plant and machinery" must be construed

reasonably, and submitted that where under the Employers' Liability Act machinery and plant is construed widely with reference to the particular employment, so a like construction is proper for the particular calling to be benefited under s. 16 of the Finance Act, 1926. He contended that plant, machinery, utensils, tools, books of reference, animals, etc., were interchangeable terms for this purpose. The test was whether the taxpayer "uses them for carrying on his business."

ROWLATT, J., giving judgment, said: I have listened to a very interesting and able argument by Mr. Daphne, but I am afraid I cannot bring myself to say that the books of a lawyer, whether a barrister, solicitor, or a judge, which are used for reference, are "plant." It is impossible to define what is meant by "plant and machinery." In spite of the reference to "Coke upon Littleton" I cannot really believe that the books which a lawyer consults, and which he does not use as "implements" are really included in "plant and machinery." The extension of the allowance to professions, employments, vocations or offices, that is to say, to all the schedules and all parts of them, I do not think involves an extension of the ordinary, commonsense meaning of the word "plant," because, as the Solicitor-General pointed out, and as occurred to me in the course of the argument, undoubtedly there are many professions and vocations where machinery and plant are used, but still machinery and plant of the sort that was understood before. I am sure that ninety-nine people out of every one hundred would exclude from the category of plant and machinery the books which a man consults for the purpose of information. Of course, there is no doubt that it is hard, because the expense of keeping up a law library is one of the expenses that have to be faced by any lawyer, but I have to deal with the words of the Act of Parliament, and unless I can say books are "plant" I cannot do anything for Mr. Daphne. I must dismiss the appeal, with costs.

COUNSEL: *The appellant appeared in person; the Solicitor-General (Sir Thomas Inskip,* K.C., M.P.) and *R. Hills,* for the respondent.

SOLICITOR: *The Solicitor of Inland Revenue.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Riversdale Mill Company, Limited *v.* **Hart.**

Lord Hewart, C.J., Avory and Salter, JJ. 11th November.

WAGES—PIECEWORKER—DEDUCTION FOR BAD WORK—QUESTION OF LEGALITY—EMPLOYER AND WORKMEN ACT, 1875 (38 & 39 Vict., c. 90)—TRUCK ACT, 1831 (1 & 2 Will. 4, c. 37), s. 3—TRUCK ACT, 1896 (59 & 60 Vict., c. 44).

Where a weaver received wages according to a standard list, subject to an implied contract that a fair and reasonable deduction should be made for bad work, it was held that the standard list wage, minus any such fair and reasonable deduction, represented the entire amount of wages due to her.

The question of the legality of the customary method of paying pieceworkers was raised in this case, stated by the Bolton justices. It was alleged that the decision in the appeal would affect a large number of operatives. Nellie Hart, the respondent, a textile pieceworker, brought a claim in Bolton Police Court against her employers, the appellants, the Riversdale Mill Company, for the sum of 6*d.*, under the Employer and Workmen Act, 1875. It was alleged that this sum had been unlawfully deducted from her wages by the employers, who counter-claimed for 1*s.* for damage suffered by them through respondent's negligence. The case found that the respondent was to be paid for her work according to a standard list, and that if a weaver had extra work owing to the materials provided by the employer being defective, then there was a custom to pay more than the standard price. On the other hand there had been for many years a practice to pay less than the standard list wage where the employer had suffered loss by reason of damage to his cloth through the negligence or bad workmanship of the weaver. For the purpose of this case it was admitted that the deduction of 6*d.* was fair and reasonable. The appellants submitted that s. 3 of the Truck Act, 1831, did not refer to a deduction for bad work; that in this case a deduction from the amount shown in the standard list was made because that amount was not "earned," due to some of the work being bad. It was also contended that the order of 3rd March, 1897, by which the Home Secretary exempted the cotton-weaving industry from the operation of the Truck Act, 1896, left that industry free to make contracts permitting deductions for bad work. For the respondents it was submitted that the Truck Act, 1896, did not apply, and that the claim was founded upon s. 3 of the Truck Act of 1831. The justices held that the standard list wage applied, and that the employers had illegally deducted 6*d.* from the respondent's wages. The employers' counter-claim succeeded; they appealed.

Lord HEWART, C.J., giving judgment, said he differed from the other members of the court. The argument on behalf of the employers was to avoid the difficulty connected with deductions from wages by saying that no deduction should be regarded as having been made from wages, as the amount of the wages was not ascertained until the deduction had been made. In his lordship's opinion the amount in the standard list was "the entire amount of wages," and not that amount less an uncertain sum. He referred to *Williams* v. *North's Navigation Collieries,* 1905, 50 Sol. J. 343 and 337; [1906] A.C. 136, and added that even had the workmen acquiesced in the custom to make deductions, they would have been illegal as a contravention of the Truck Act, 1831.

AVORY, J., said that, in his opinion, the respondent was employed to weave a good merchantable cloth under an implied contract that she should be paid according to a standard list, subject to a fair and reasonable deduction for bad work. The amount paid to her, less the 6*d.*, was the entire amount of wages due to her.

SALTER, J., agreed with Avory, J., and the appeal was allowed.

COUNSEL: for the appellants, *Cyril Atkinson,* K.C., and *Harold Derbyshire*; for the respondent, *T. Eastham,* K.C., and *N. J. Laski.*

SOLICITORS: *Rawle, Johnstone & Co.,* for *John Taylor & Co.; Patersons, Snow & Co.,* for *Fielding & Fernihough.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

United Law Society.

The annual dinner of the Society was held at the Monico Restaurant on Monday, 13th ult. The Rt. Hon. The Lord Chancellor was in the chair. The loyal toasts were proposed by the chairman. The toast of "His Majesty's Judges" was proposed by Sir T. Willes Chitty and responded to by The Hon. Mr. Justice Salter. "The Legal Profession" was proposed by Sir John Bland Sutton, Bt., F.R.C.S., and responded to by Sir Patrick Hastings, K.C., and Mr. A. H. Coley. "The United Law Society" was proposed by The Rt. Hon. The Lord Chancellor and responded to by Mr. L. F. Stemp. "The Visitors" was proposed by Mr. J. F. W. Galbraith, K.C., M.P., and responded to by The Rt. Hon. Lord Morris, K.C.M.G., P.C., K.C., LL.D. The toast of "The Rt. Hon. The Lord Chancellor" was proposed by Mr. F. W. Yates, and The Rt. Hon. The Lord Chancellor responded.

Legal Notes and News.

Professional Announcements

(2s. per line).

As from 1st January, 1927, Messrs. TURNBULL & FINDLAY, Solicitors, 155, St. Vincent-street, Glasgow, have "assumed" as a partner Mr. ALEXANDER MCCLURE, Solicitor, of that city, who was for many years the principal assistant to the late Mr. William Hutchison, LL.B., formerly M.P. for Kelvingrove. The practice will be carried on at the above address under the same firm name.

Mr. E. J. BETTSON, A.C.A., and Mr. R. C. FIELDER, A.C.A., announce that they have now retired from the firm of MOORE, STEPHENS, FUTCHER, HEAD & Co., Chartered Accountants, 4, London Wall-avenue, E.C.2, and have commenced in practice under the style of Bettson, Fielder & Co., 274, Gresham House, Old Broad-street, E.C.2. Telephone: London Wall 7205–6.

ANGLO-GERMAN TRIBUNAL.

JUDGMENT AGAINST GERMAN SHIPPING COMPANIES.

The Anglo-German Mixed Arbitral Tribunal (Second Division), sitting in London, delivered judgment in favour of Sir Joseph William Isherwood, Bart., in claims against three German shipping companies, for the price of plans and royalties concerning an invention used by the debtor companies in the construction of ships before the outbreak of the war.

Mr. Schiller, K.C. (with him Mr. Trevor Watson), for the claimant, said Sir Joseph made contracts with the debtor companies, Flensburger Schiffsban Gesellschaft, G. Seebeck Actien Gesellschaft, and Reiherstieg Schiffwerfte and Machinenfabrik, for the use of his invention in the building of certain proposed vessels. In the case of one of the debtor companies, he had obtained judgment before a German court as to part of his claim before August, 1914, but the debtor company lodged an appeal which was still pending when war was declared. The present claims, however, were not based upon this judgment, but upon the pre-war contracts.

The German Government Agent (Dr. Lehmann) contended, for the debtor companies and the German Clearing Office, that as eventually a patent was refused by the German Patent Office, the agreement to pay a sum for the use of the invention was void, even though at the time the agreement was made there was a provisional protection. Dr. Lehmann cited cases decided in German courts under German law.

The Tribunal, consisting of Baron D. W. Van Heeckeren (President), Mr. Heber Hart, K.C. (British Arbitrator), and Mr. Hermann Johannes (German Arbitrator), in delivering judgment, said Sir J. W. Isherwood had done everything incumbent upon him to perform his part of the contract and was entitled to the sums claimed, together with the interest allowed under the Treaty of Versailles. The cases cited by Dr. Lehmann were in respect of damages for the infringement of inventions provisionally protected, and so differed from the present cases, where express licences had been given to use an invention.

Judgment was accordingly entered against the Flensburger Schiffsban Gesellschaft for £65 17s. 6d., against the G. Seebeck Actien Gesellschaft for £1,348 6s. 8d. and against the Reiherstieg Schiffwerfte and Machinen-fabrik for £450 3s. 9d., together with Treaty interest on these sums, and costs.

A MISSING BILL OF EXCHANGE.

The Anglo-German Mixed Arbitral Tribunal (Second Division), sitting in London, has delivered judgment in favour of Ands Koch, AG., a German firm of musical instrument makers, in claims for the price of goods sold and delivered to Messrs. James Wisbey & Co., a London firm, before the war.

In the first case, Messrs. Wisbey & Co. admitted having ordered the goods early in 1914, but denied having received them. In the second case, Messrs. Wisbey & Co. admitted having received the goods, but stated that these goods had been paid for by the acceptance by them of a bill of exchange drawn by the creditors. This bill had not been presented for payment, and was not produced to the Tribunal, but the debtors, having paid its value to the British Clearing Office for the account of the German firm against the production of the bill, maintained that any order made by the Tribunal should be against the Clearing Office.

Judgment was given against Messrs. Wisbey & Co. for the sums of £32 15s. 10d. in the first case and £10 18s. 3d. in the second case (conditional on the German Clearing Office giving an indemnity to the satisfaction of the British Clearing Office in respect of the missing bill of exchange) plus Treaty interest.

POOR RELIEF FOR MINERS' WIVES.

IMPORTANT JUDGMENT.

Judgment was given last week by Lord Constable in the Court of Session, Edinburgh, in a vote of suspension and interdict at the instance of David Colville & Sons, Ltd., and others, ratepayers in the parish of Dalziel, against the parish council of Dalziel.

Lord Constable said that since May, 1926, the parish council had been making payments of relief to the wives and children of miners who were involved in the recent industrial dispute. The purpose of the action was to test the legality of those payments. The complainers maintained that the payments were not warranted by the ordinary rules of the Poor Law in respect of able-bodied men who were not unable to obtain employment, and that their wives and children were not proper objects of relief. The respondents maintained that the payments were warranted under the ordinary rules or under the Poor Law Emergency Act of 1921.

Lord Constable found that the payments made by the respondents in the name of poor relief for and on behalf of the wives and dependents of the person named in the prayer of the note and other able-bodied miners in the parish during the dispute, were unwarranted and contrary to the law, but saving always and without prejudice to the power of the board of health to abstain from disallowing or surcharging such payments, the complainers were found entitled to expenses. He was satisfied that the respondents did everything that was reasonably possible in a very difficult situation to investigate the applications made to them. They did not investigate whether the applicants themselves could obtain employment, because they were not relieving the applicants themselves but their dependents, and assumed that they could treat the families of the applicants as independent objects of relief.

The question was whether that assumption was warranted. The right to poor relief largely depended upon judicial decision, and after a close examination of the cases which had been cited to him, he was of opinion that the payments complained of were not warranted by what he might term the ordinary rules of the Poor Law. The parish council assumed that the men were unable to obtain employment. That assumption was quite unwarranted because there were notices at pitheads that the pits were open.

ARE CRIMINALS MADE OR BORN?

"If we want to exterminate the adult criminal we must start with the young ones," said Dr. Cyril Burt, psychologist to the London County Council in an interesting lecture on "The Vocational Adviser and the Young Delinquent," at a meeting of the National Institute of Industrial Psychology in the London School of Economics.

It had now been shown, he said, that we could no longer assume with Lombroso that the habitual criminal was a born offender. The factors were complex, partly environmental and partly hereditary. It was found that a large percentage of young criminals were in employment that they disliked or were unsuited for. Generally speaking, vocational misfits were either dull children in jobs beyond them or bright children in dull jobs. Only 7 per cent. of youthful criminals were mentally deficient. Unemployment was also an important factor in causing youthful delinquency. About 11 per cent. of youthful delinquents were out of employment at the time of their offences.

Many youthful criminals were created because they had a special gift for which they had not discovered a right use. Those with a mechanical gift, for example, were often led to put discs in slot machines and, finally, to pick locks. Others with what teachers would call a gift for "oral composition" acquired the habit of telling plausible tales and begging and swindling. One such had been reformed, and was now a highly successful commercial traveller.

Dr. Burt's specific against crime was "to be happy, contented and absorbed in one's work," and he quoted Bernard Shaw as saying, "Nothing can kill the passion for crime except the passion for something more wholesome."

ROMANCE OF MISLAID WILL.

The strange romance of a mislaid will has been unfolded before the Fourteenth Chamber of the Paris courts in connexion with a claim against a wealthy heiress who narrowly escaped losing the whole of her fortune through the disappearance of a slip of paper. When Mme. Berthon, of Saint Etienne, died in 1905 she was worth over a million gold francs, and was known to have made a will bequeathing her whole estate to her godchild, Claudine Chavanne, then four years of age. But this will could not be found, so that natural heirs of Mme. Berthon took possession of her property. A year later, however, a neighbour of the Chavanne family, having bought a pound of butter at a local market, found the missing will used as a wrapping for his purchase.

The litigation which followed resulted in the heritage being handed over to Claudine Chavanne. But the process of claiming it had proved costly, and the heiress's parents had been obliged to borrow 30,000 francs in order to carry it through. The case now before the court is a claim by the lender for repayment of his loan. The heiress's reply to his demand is that, though the lender no doubt rendered her a very great service, she is not indebted to him, since the money was borrowed by her parents, who could not legally borrow on behalf of a minor without the consent of a family council and a civil tribunal. Judgment is reserved for a week.

PLAINTIFF AND ANCESTOR.

A decision of considerable interest to writers has been given in Paris by the Twelfth Correctional Chamber in a case in which Me. Mario de Roux, barrister and historian, was charged with "defamation." The charge was brought by M. Naundorff, who claims the title of "Prince de Bourbon," and was based on statements made by Me. de Roux in his book, "Louis XVII and the False Dauphins." One chapter of this work deals with the story of the Naundorff who was one of the several people who appeared after the Revolution and claimed to be Louis XVII, who, they said, did not, as was generally believed, die in the Temple Prison, but escaped. The descendant of this Naundorff contended that Me. de Roux's statements concerning his ancestor amounted to "defamation" of himself. The proceedings in such cases may not, under French law, be published, but in this case they ended in the acquittal of Me. de Roux, the tribunal holding that he had not in his book exceeded the rights of an historian, and, furthermore, that an author could not be prosecuted for "defamation" of the dead unless the heirs of the person in question could show that they actually suffered prejudice in consequence.

WAR COMPENSATION COURT.

£500 FOR SEIZED BOOKS.

After holding seventy-four public sittings during the year 16th August, 1925, to 16th August, 1926, and determining 139 claims, the War Compensation Court have awarded lump sum payments aggregating £373,558 against claims for approximately £855,681, states the report of the court, issued on Saturday last. During the course of 958 total sittings 3,465 claims had been determined and reported. They had in all awarded lump sum payments amounting in the aggregate to £4,922,131 against claims for approximately £9,836,340, and periodical payments at the rate of £58,557 a year against claims for approximately £88,616 a year. Two hundred and thirty-one claims had been withdrawn or otherwise disposed of.

With respect to the claim of the Dover Harbour Board for £265,658 17s. 8d. for loss of revenue and £79,095 10s. 11d. for deferred repairs and maintenance, judgment was given for £27,000 and for the agreed sum of £4,356 13s. 6d. for wages and bonus, while £2,000 were allowed for costs. The Manchester Ship Canal were awarded £1,000 a month for five months for the use of certain sheds, their claim being for £12,583 18s. 6d. with £2,516 15s. 9d. interest and other items. A further allowance was also made for space occupied prior to the five months.

Mrs. Marie Antoinette Ross submitted a claim for £19,956 in respect of the seizure of two works of reference, "Public School Who's Who" and a "Counties Who's Who," and the court awarded £500. The books were to be published during the war period, and as they included information about officers at the front and elsewhere which it was thought should not be publicly stated, 17,000 circulars were taken by the police from premises in London, and 8,000 items, including books, circulars, papers and correspondence were seized at Bournemouth.

DAMAGE TO HIRED MOTOR CAR.

A jury in the Middlesex Sheriff's Court recently awarded damages totalling £200 to Messrs. Godfrey Davis and Co., motor agents and hirers, of Albemarle-street, W., in respect of a claim brought by them against Geoffrey James Le Breton Beaumont, of Eardley-crescent, Earl's Court. Counsel for the plaintiffs stated that Beaumont hired a car from Messrs. Davis on 2nd July, the agreement being that it was to be driven only by himself or a paid chauffeur. Later the same day the car was wrecked in a collision with a telegraph pole on the high road between Luton and Bedford. A half-brother of Beaumont's was at the wheel at the time, but the defendant himself was also in the vehicle. Both men were drunk, and after they had recovered from injuries they were convicted at the local police court. The car, which cost £289 in February last, was so badly damaged, added counsel, that it was not considered worth while to attempt repairs, and the salvage was sold for £10. The defendant did not appear in court, nor was he legally represented.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 13th January, 1927.

	Middle Price 29th Dec.	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 2½%	53⅞	4	13	0	—		
War Loan 5% 1929-47	100⅛	4	19	6	4	19	6
War Loan 4½% 1925-45	94½	4	15	6	4	19	6
War Loan 4% (Tax free) 1929-42	100⅝	3	19	6	4	0	0
War Loan 3½% 1st March 1928	99½	3	11	0	4	18	0
Funding 4% Loan 1960-90	85	4	14	6	4	15	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	92	4	7	0	4	9	0
Conversion 4½% Loan 1940-44	94½	4	15	6	4	19	6
Conversion 3½% Loan 1961	74⅞	4	14	0	—		
Local Loans 3% Stock 1921 or after	62¾	4	16	0	—		
Bank Stock	246½	4	17	6	—		
India 4½% 1950-55	92	4	17	6	5	0	6
India 3½%	71	4	19	0	—		
India 3%	59¾	5	1	0	—		
Sudan 4½% 1939-73	93¾	4	16	0	5	0	0
Sudan 4% 1974	83¾	4	15	6	4	18	6
Transvaal Government 3% Guaranteed 1923-53 (Estimated life 19 years)	81¼	3	14	0	4	12	0
Colonial Securities.							
Canada 3% 1938	83½	3	11	6	4	18	0
Cape of Good Hope 4% 1916-36	92	4	7	0	5	1	6
Cape of Good Hope 3½% 1929-49	78¾	4	9	0	5	1	0
Commonwealth of Australia 5% 1945-75	98½	5	1	6	5	2	0
Gold Coast 4½% 1956	94	4	16	0	4	17	6
Jamaica 4½% 1941-71	91¾	4	18	0	5	0	0
Natal 4% 1937	92	4	7	0	4	19	0
New South Wales 4½% 1935-45	87½	5	3	0	5	11	6
New South Wales 5% 1945-65	94¼	5	6	0	5	6	0
New Zealand 4½% 1945	95½	4	14	0	4	18	0
New Zealand 4% 1929	97	4	2	6	5	5	0
Queensland 5% 1940-60	95½	5	4	6	5	5	6
South Africa 5% 1945-75	98¼	5	1	0	5	1	0
S. Australia 5% 1945-75	98¼	5	1	0	5	2	6
Tasmania 5% 1932-42	98¾	5	1	0	5	2	6
Victoria 5% 1945-75	97⅜	5	2	6	5	2	6
W. Australia 5% 1945-75	100	5	0	0	5	2	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corpn.	62	4	17	0	—		
Birmingham 5% 1946-56	102⅛	4	18	0	4	19	0
Cardiff 5% 1945-65	100½	4	19	0	4	19	6
Croydon 3% 1940-60	67½	4	9	0	5	2	0
Hull 3½% 1925-55	76¾	4	11	6	5	0	6
Liverpool 3½% on or after 1942 at option of Corpn.	72¼	4	17	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52¼	4	16	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62	4	17	0	—		
Manchester 3% on or after 1941	63	4	15	0	—		
Metropolitan Water Board 3% 'A' 1963-2003	62¼	4	16	0	4	18	0
Metropolitan Water Board 3% 'B' 1934-2003	63¾	4	14	6	4	17	0
Middlesex C. C. 3½% 1927-47	80¾	4	6	6	4	19	6
Newcastle 3½% irredeemable	70½xd	4	19	0	—		
Nottingham 3% irredeemable	61¼	4	17	6	—		
Stockton 5% 1946-66	100¼	5	0	0	5	0	0
Wolverhampton 5% 1946-56	100¾	4	19	6	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	82	4	17	6	—		
Gt. Western Rly. 5% Rent Charge	100	5	0	0	—		
Gt. Western Rly. 5% Preference	94	5	6	6	—		
L. North Eastern Rly. 4% Debenture	76¾	5	4	6	—		
L. North Eastern Rly. 4% Guaranteed	73½	5	9	0	—		
L. North Eastern Rly. 4% 1st Preference	65¼	6	0	6	—		
L. Mid. & Scot. Rly. 4% Debenture	81½	4	18	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	79	5	1	6	—		
L. Mid. & Scot. Rly. 4% Preference	74	5	8	0	—		
Southern Railway 4% Debenture	81½	4	18	6	—		
Southern Railway 5% Guaranteed	99	5	1	0	—		
Southern Railway 5% Preference	94	5	6	6	—		